S. HRG. 100-908

DRUNK DRIVING PREVENTION ACT OF 1988

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSUMER

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2549

TO PROMOTE HIGHWAY TRAFFIC SAFETY BY ENCOURAGING THE STATES TO ESTABLISH MEASURES FOR MORE EFFECTIVE ENFORCEMENT OF LAWS TO PREVENT DRUNK DRIVING, AND FOR OTHER PURPOSES

AUGUST 2, 1988

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

89-834 O WASHINGTON : 1988

S261-7

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BROCK ADAMS, Washington

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
PAUL S. TRIBLE, JR., Virginia
PETE WILSON, California
JOHN MCCAIN, Arizona

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON THE CONSUMER

ALBERT GORE, JR., Tennessee, *Chairman*

WENDELL H. FORD, Kentucky
JOHN B. BREAUX, Louisiana

JOHN MCCAIN, Arizona
ROBERT W. KASTEN, JR., Wisconsin

CONTENTS

	Page
Opening statement by Senator Gore	1
Opening statement by Senator McCain	2
Opening statement by Senator Pressler	3
Opening statement by Senator Ford	3
Opening statement by the Chairman	4
Opening statement by Senator Danforth	17
Text of S. 2549	5

LIST OF WITNESSES

Ford, Col John, Missouri Highway Patrol	44
Hanna, John T., deputy commissioner, State of Virginia Department of Motor Vehicles	38
Prepared statement	41
Lautenberg, Hon. Frank R., U.S. Senator from New Jersey	12
O'Neill, Brian, Insurance Institute for Highway Safety	31
Reagle, George, Associate Administrator for Traffic Safety Programs, NHTSA; accompanied by Dr. James Nichols	15
Prepared statement	22
Rumbaugh, Ronald, president, National Beer Wholesalers' Assn	25
Sandoff, Micky, vice president, victim issues, Mothers Against Drunk Driving	28

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

American Insurance Assn., statement	49
Basaman, John, statement	51
Burnett, Hon. Jim, Chairman, NTSB, letter	60
Howard, Richard L., secretary, Department of Transportation and Jeff Stingley, secretary, Department of Commerce & Regulation, State of South Dakota, letter	62
Man Sentenced in Manslaughter Case, article	51
Report of the National Association of Criminal Defense Lawyers on S. 2367	52

DRUNK DRIVING PREVENTION ACT OF 1988

TUESDAY, AUGUST 2, 1988

U.S. SENATE,
SUBCOMMITTEE ON THE CONSUMER,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room SR-253, Russell Senate Office Building, Hon. Albert Gore, Jr. [chairman of the subcommittee] presiding.

Staff members assigned to this hearing: Linda Lance; Kevin Curtin, staff counsels; and Alan Maness, minority staff counsel.

OPENING STATEMENT BY SENATOR GORE

Senator GORE. The hearing will come to order. We are doing double duty in this hearing room today, and so we wanted to let the first hearing clear out.

This afternoon we're going to grapple with the ongoing nationwide problem of drunken driving, an enormously serious matter which puts each of us and all of our children at risk every day we use the highways. The recent school bus accident in Kentucky was yet another tragic reminder that this problem is far from solved. There were last year 41,000 people who were killed on the highways, and more than half of them as a result of drunk driving.

In this hearing we will receive testimony on legislation that I, along with others, have cosponsored on which the Senator from New Jersey, Senator Lautenberg, has taken the lead. He will be our lead-off witness—legislation that we hope will be part of the solution to this enormous tragedy.

It would provide Federal grants to states to encourage enactment of particular laws which are to believed to be effective against drunk drivers.

Most notable among those state laws is one which would establish procedures or prompt administrative suspension of the licenses of drivers who fail or refuse to take a chemical test to determine whether or not they are intoxicated. I understand that there is substantial evidence that such laws are extremely effective, indeed the most effective, in getting drunk drivers off the highways. We look forward to hearing more about that during the hearing this afternoon.

I'm also most interested in the varied perspectives of our witnesses on what they believe to be the best means to address this problem.

In considering this issue, I'm certain of at least one thing, and that is that the involvement of the Federal Government is vital. It is for that reason that I have, since 1981 when I was in the House of Representatives, sponsored legislation to enlist the Federal Government in the effort to stop drunk driving.

The states are close to the problem in their particular geographic areas, and provide a critical and unique perspective and important judgment. But this is also a serious national issue which must be addressed as quickly and as effectively as possible. The resources of the Federal Government, working in partnership with the states, must be made available to help solve this problem. And today we will explore how best to do that.

I want to recognize the ranking Republican member of our subcommittee, Senator McCain.

OPENING STATEMENT BY SENATOR McCAIN

Senator McCAIN. Thank you, Mr. Chairman, and thank you for calling this important hearing.

As you have so eloquently stated, this is a nationwide issue of the utmost importance. There is an average of one alcohol-related highway fatality every 22 minutes in this country. About 40 percent of all fatal highway crashes involve someone who is drunk. About 2 out of every 5 Americans will be involved in an alcohol-related crash at some time in their lives.

Drunk driving hurts all segments of our society, but it is most damaging to our young people. Traffic crashes are the greatest single cause of death for Americans between ages 5 and 34. More than half of these fatalities are alcohol-related.

Some states are taking the lead in fighting the problem, and I'm pleased to report that my home State of Arizona has enacted a comprehensive drunk driving measure. The law provides for an administrative per se system through which drivers who tested .10 percent blood alcohol content and above are automatically suspended for a period of 90 days. In addition, if the driver is later convicted of drunk driving in the courts, he must spend at least 24 hours in jail. Also, a convicted drunk driver must pay for a screening process at the Health Services Department. Depending on the outcome of the screening process, the defendant must go through an alcohol awareness program at his own expense.

This new law became effective on January 1 and it has already had results. Both drunk driving arrests and accidents are down by some 20 percent. Arizona's experience may be of some benefit to the rest of the Nation.

And I would like to say, Mr. Chairman, that some of the witnesses we will hear from today were very helpful in our state in helping to shape that legislation, including Mothers Against Drunk Drivers.

I look forward to this hearing as an opportunity for our subcommittee to explore more means of fighting drunk driving.

I thank you, Mr. Chairman.

Senator GORE. Thank you.

Senator Pressler?

OPENING STATEMENT BY SENATOR PRESSLER

Senator PRESSLER. Mr. Chairman, I want to commend you and Senator McCain and our colleague, Senator Lautenberg, and others for their leadership in this area.

As has been pointed out, there are few areas where we are losing more people than in highway accidents and drunk driving. And any efforts to curtail it have my support.

There is a catch to this legislation insofar as my state is concerned. The legislation, as currently written, would prevent South Dakota from participating in the grant program that would provide money to states for continuation of drunk driving prevention programs. S. 2549 requires states to fund this self-sustaining program with money from fines collected from convicted drunk drivers. South Dakota's constitution requires all fine money to be used as a permanent funding mechanism for public education.

During the EPW markup two weeks ago, Senator Lautenberg was more than gracious in accepting amendments which corrected this unfairness. Since we are now dealing with the bill in its original, unamended form, I intend to offer similar amendments to S. 2549, and I anticipate no objection from my colleagues.

Mr. Chairman, without objection, I would like to submit for the record a letter from South Dakota's Secretary of Transportation and Secretary of Commerce regarding this legislation. This letter provides additional insight into the potential improvements I have suggested.

Also, I commend Senators Lautenberg and Reid for their work to bring the danger of drunk driving to a halt. I am certainly 100 percent behind their objectives. I hope my suggestions will be considered in order to improve S. 2549 and make the Drunk Driving Prevention Act of 1988 a program that works for every state.

Senator GORE. Without objection, the letter referenced will be included in the record.

Senator Ford?

OPENING STATEMENT BY SENATOR FORD

Senator FORD. Thank you, Mr. Chairman. I want to add my compliments to you and Senator McCain for your efforts here today.

You are aware and everyone in this room is aware of the tragic accident that occurred in my state not too long ago. Many of the families I knew very well. It was an ecumenical trip. Many churches were involved in that school bus accident and it touched practically every facet of that community.

In Louisville today the National Transportation Safety Board is beginning to hold its hearing on that particular accident. I hope the main issue of that accident will be drunken driving. And I'm of the opinion that it will be.

So, I'm very hopeful that as we progress in these hearings that we can find a way that will prevent accidents and will prevent deaths as it relates to drunken driving. I look forward to the hearings, and I look forward to working with my distinguished colleagues to find a common ground where we can proceed as fast as humanly possible to prevent this tragedy from happening in the future, or any tragedy.

So, I again compliment you, Mr. Chairman, on what you're trying to do here. Senator Lautenberg, Senator Reid, and all of us I think are trying to arrive at the same objective, and hopefully we will in the course of these hearings find a way through this mine field to accomplish our end results. And I thank you, Mr. Chairman.

Senator GORE. Thank you very much.

Indeed, this is a bipartisan effort, and I want to note for the record that the ranking Republican on the full committee, Senator Danforth, is a cosponsor of this bill and is on the floor as a result of the trade legislation being considered.

And let me also note that Senator Reid, who has introduced another bill which takes a slightly different approach, had planned to be here to testify today, but because of an illness in his family is submitting a written statement instead.

The Chairmam of the full Committee, Senator Hollings do you have a statement?

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. Back in 1982 I cosponsored a bill that became law and was one of the first efforts at the federal level to deal with the problem of drunk drivers on our highways. That law encouraged, among other things, mandatory minimum sentences for people who drive while intoxicated. While I believe that it helped advance highway safety, I do not delude myself that the problem of drunk driving is solved.

Department of Transportation data shows that between 1982 and 1986 the number of drivers involved in fatal accidents who were legally intoxicated at the time of the crash decreased by 13%. This is encouraging, but cannot be cause for celebrating or decreased vigilance. In 1986 there were over 41,000 fatal accidents in this country, and more than half of all fatalities were alcohol-related. We must continue to work to prevent these needless deaths.

This hearing is a part of the continued congressional effort toward that end. The people who will testify today are involved with various aspects of this problem. They work as program administrators at the state and federal level, and with law enforcement, victims' assistance, and the alcoholic beverage industry. I am anxious to hear what they think we should do about this problem.

For example, I understand that only 17 states have qualified for the Incentive Grant Program we enacted in 1982. I hope that we can learn some of the reasons for that lack of participation and some of the problems the states are having in meeting the requirements of that program.

Another matter of particular concern to me is the efficient use of the federal money that's involved in these programs. The bill we are looking at today would authorize $125 million over three fiscal years. Drunk driving is a problem of great magnitude and it may justify an expenditure of great magnitude. But we must be sure that we're spending no more than we need to, and that we're spending it in the most effective way. I hope the witnesses can give us some information to help address that question.

The testimony we will hear today is an essential part of the congressional decision-making process. I welcome these witnesses and thank them for taking the time and effort to provide information to the committee.

[The bill follows:]

100TH CONGRESS
2D SESSION

S. 2549

To promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 21 (legislative day, JUNE 20), 1988

Mr. LAUTENBERG (for himself, Mr. DANFORTH, Mr. GORE, Mr. PELL, Mr. BENTSEN, Mr. WEICKER, Mr. CHAFEE Mr. LUGAR, Ms. MIKULSKI, Mr. MURKOWSKI, Mr. HEINZ, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To promote highway traffic safety by encouraging the States to establish measures for more effective enforcement of laws to prevent drunk driving, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Drunk Driving Prevention Act of 1988".

SEC. 2. (a) Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 409. Drunk driving enforcement programs

"(a) Subject to the provisions of this section, the Secretary shall make basic and supplemental grants to those States which adopt and implement drunk driving enforcement programs which include measures, described in this section, to improve the effectiveness of the enforcement of laws to prevent drunk driving. Such grants may only be used by recipient States to implement and enforce such measures.

"(b) No grant may be made to a State under this section in any fiscal year unless such State enters into such agreements with the Secretary as the Secretary may require to ensure that such State will maintain its aggregate expenditures from all other sources for drunk driving enforcement programs at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this section.

"(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

"(1) in the first fiscal year a State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the drunk driving enforcement program adopted by the State pursuant to subsection (a) of this section;

"(2) in the second fiscal year the State receives a grant under this section, 50 per centum of the cost of

implementing and enforcing in such fiscal year such program; and

"(3) in the third fiscal year the State receives a grant under this section, 25 per centum of the cost of implementing and enforcing in such fiscal year such program.

"(d)(1) Subject to subsection (c) of this section, the amount of a basic grant made under this section for any fiscal year by any State which is eligible for such a grant under subsection (e)(1) of this section shall equal 30 per centum of the amount apportioned to such State for fiscal year 1989 under section 402 of this title.

"(2) Subject to subsection (c) of this section, the amount of a supplemental grant made under this section for any fiscal year by any State which is eligible for such a grant under subsection (e)(2) of this section shall not exceed 20 per centum of the amount apportioned to such State for fiscal year 1989 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

"(e) For purposes of this section, a State is eligible for a basic grant if such State provides for—

"(1) an expedited driver's license suspension or revocation system which requires that—

"(A) when a law enforcement officer has probable cause under State law to believe an individual has committed an alcohol-related traffic offense, and such individual is determined, on the basis of one or more chemical tests, to have been under the influence of alcohol while operating the motor vehicle concerned or refuses to submit to such a test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, which shall provide information on the administrative procedures by which a State may suspend or revoke a license for drunk driving and specify any rights of the driver in connection with such procedures, and shall take possession of the driver's license of such individual;

"(B) after serving such notice and taking possession of such driver's license, the law enforcement officer shall immediately report to the State entity responsible for administering driver's licenses all information relevant to the enforcement action involved;

"(C) upon receipt of the report of the law enforcement officer, the State entity responsible for administering driver's licenses shall, where an individual is determined on the basis of one or

more chemical tests to have been intoxicated while operating a motor vehicle or is determined to have refused to submit to such a test as proposed by the officer, (i) suspend the driver's license of such individual for a period of not less than ninety days if such individual is a first offender and (ii) suspend the driver's license of such individual for a period of not less than one year, or revoke such license, if such individual is a repeat offender;

"(D) such suspension or revocation shall take effect at the end of a period of not more than fifteen days immediately after the day on which the driver first received notice of the suspension or revocation; and

"(E) the determination as required by subpararaph (C) of this paragraph shall be in accordance with a process established by the State, under guidelines established by the Secretary to ensure due process of law, (i) for such administrative determinations and (ii) for reviewing such determinations, upon request by the affected individual within the period specified in subparagraph (D) of this paragraph; and

89-834 0 - 88 - 2

"(2) a self-sustaining drunk driving enforcement program under which the fines or surcharges collected from individuals convicted of driving a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of drunk driving.

"(f) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition such State provides for—

"(1) mandatory blood alcohol content testing whenever a law enforcement officer has probable cause under State law to believe that a driver of a motor vehicle involved in a collision resulting in the loss of human life or, as determined by the Secretary, serious bodily injury, has committed an alcohol-related traffic offense; or

"(2) an effective system for preventing drivers under age twenty-one from obtaining alcoholic beverages, which may include the issuance of driver's licenses to individuals under age twenty-one that are easily distinguishable in appearance from driver's licenses issued to individuals twenty-one years of age or older.

"(g) There are authorized to be appropriated to carry out this section, out of the Highway Trust Fund,

$25,000,000 for the fiscal year ending September 30, 1989, and $50,000,000 per fiscal year for each of the fiscal years ending September 30, 1990, and September 30, 1991. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs.".

(b) The analysis of chapter 4 of title 23, United States Code, is amended by adding at the end the following:

"409. Drunk driving enforcement programs.".

SEC. 3. (a) Not later than thirty days after the date of enactment of this Act, the Secretary of Transportation shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study to determine the blood alcohol concentration level at or above which an individual when operating a motor vehicle is deemed to be driving while under the influence of alcohol.

(b) In entering into any arrangement with the National Academy of Sciences for conducting the study under this section, the Secretary shall request the National Academy of Sciences to submit, not later than one year after the date of

enactment of this Act, to the Secretary a report on the results of such study. Upon its receipt, the Secretary shall immediately transmit the report to the Congress.

SEC. 4. The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 409 of title 23, United States Code, not later than December 1, 1988. The final regulations for such implementation shall be issued, published in the Federal Register, and transmitted to Congress before March 1, 1989.

Senator GORE. Now, our first witness, quite appropriately, is Senator Frank Lautenberg of New Jersey who, if you will not mind my saying so, has really been the outstanding leader in the United States Senate on this issue. He has been very tenacious. This is the second major piece of legislation that he has introduced on this same subject. And, Senator Lautenberg, we appreciate your focusing the attention of the entire Senate and the entire country on this tragic problem and, beyond that, coming up with some good research and practical solutions for the problem. We are honored to have you lead off this hearing. So, please proceed.

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman, Senator Ford and the other members of the committee. I thank you for the opportunity to appear here today.

There is no state and no community that is exempt from the tragedy of drunk driving. As we sit here, the tragedies of drunk driving. If today is an average day, more than 65 Americans will die because of drunk driving go on. This senseless slaughter on the highways takes almost 24,000 lives a year. Not all cases are as well publicized or evoke such widespread emotion as the tragic crash that we witnessed in Kentucky.

But whether it is 27 innocent victims on a school bus in Kentucky, vacationers in Hawaii, a college football player in New Jersey, or a child holding her mother's hand in Virginia waiting for a school bus, a drunk driving death means a family somewhere loses a loved one. That is a senseless loss. It's a loss that we can and must do something about.

The bill before the subcommittee today would help our fight against drunk driving by encouraging states to adopt tough laws that have proven to be effective. We heard the statement of the Senator from Arizona. This will save lives, and I don't think anyone would dispute that that's a goal worth attaining or working for.

While saving lives is clearly our priority, let me also point out there are tremendous economic impacts associated with drunk driving. It is estimated that drunk driving costs this country $26 billion a year. Like the death toll, this too is a cost that we can't and shouldn't continue to bear.

Mr. Chairman, let me briefly summarize S. 2549. It would establish a new limited incentive grant program to encourage states to crack down on drunk driving. Like the section 408 program now in place, it would provide grants to states under two categories, one basic, one supplemental. There are two requirements for a basic grant.

First, the state must adopt an administrative revocation law. Administrative revocation gets the drunk driver off the road immediately. The punishment is sure and swift. The certainty of the punishment is essential in combatting drunk driving. In those states where administrative revocation is in place, it has been found to reduce drunk driving accidents by 9 percent.

Second, a state must provide a means of providing continuing funding for its drunk driving programs. The seed money provided by Federal grants would help the states get comprehensive programs up and keep them running. The self-supporting mechanism would assure that these programs would continue.

Once a state qualifies for a basic grant, it will then be eligible to receive supplemental grants. S. 2549 contains two supplemental grant criteria.

I would like to note, however, that the bill reported by EPW contains a total of four supplemental criteria.

The first supplemental criterion requires that a state issue a special driver's license to those under legal minimum drinking age.

Mr. Chairman, you made reference to the other drunk driving legislation that we introduced in the past. That was four years ago. That law encouraged states, finally all 50 of them, to adopt the minimum drinking age of 21. That law is in place, and we're saving as many as 1,000 young people a year from dying on the highways.

By using special licenses for younger drivers, we can expect better enforcement of the law and can look forward to saving even more lives.

The next supplemental requirement is for mandatory blood alcohol concentration testing of drivers involved in fatal accidents or accidents resulting in serious injury. This provision will result in more consistent, reliable information on the problem of drunk driving.

As I mentioned earlier, the Environment and Public Works Committee has reported S. 2367, the earlier version of S. 2549. That bill, as reported, contains two additional supplemental criteria, one calling for the adoption of laws banning drinking and driving in the most literal sense. The other encourages states to confiscate license plates and vehicle registration of drivers who are repeated offenders or who continue to drive while under license suspension.

Mr. Chairman, I know that you have a full slate of witnesses to follow, and I believe their testimony will confirm that drunk driving is a problem that still needs aggressive action, with leadership from the

Federal Government. And I think that the subcommittee will find that S. 2549 is a sound approach to reducing drunk driving, and that it will produce tangible results. In this case, of course, that means lives saved.

As a cosponsor of this bill, Mr. Chairman, you appreciate its importance, and I hope that we can work together to see that this vital legislation is enacted in the short amount of time remaining for this legislative year. I thank you very much.

Senator GORE. Well, we intend to move it. And your testimony gets us off to an excellent start.

Very briefly, I understand that you offered several amendments to S. 2367. Would you recommend that same package of amendments to S. 2549, this bill?

Senator LAUTENBERG. Yes, I would. We have extended the period so that someone who has had a license suspended will have an opportunity to appeal the decision. Certainly we want that process there. We have a clarification of a self-sustaining program. We included other amendments, like the open container law as a supplemental provision, license plate forfeiture. All of these things are of value, and I hope the bill, as introduced here, will also be amended to conform.

Senator GORE. Senator Ford?

Senator FORD. I have no questions, Mr. Chairman. Thank you.

Senator GORE. Well, let me just say before you go that I think it is a remarkable thing that many, many thousands of lives have been saved because of the bill you passed a few years ago. And we will be seeking to confirm in today's testimony the opinion of experts who have told us outside of the hearing that many more thousands of lives could be saved if your new legislation is adopted.

And any family that has been confronted with the tragic consequences of drunk driving accidents knows that it is time for this country to push hard for meaningful solutions. And you have led the Senate and pointed the way toward those solutions. And we certainly appreciate it. Thank you.

Senator LAUTENBERG. Thank you, Mr. Chairman.

The one thing that we all know now is that people from organizations like MADD and SADD and the others are often led by people who have experienced the ultimate tragedy, and that is the loss of a child or a loved one in a drunk driving accident. And to the credit of these people, to have the courage to review these accidents in public, to discuss their personal pain and the anxiety that went along with perhaps recovery from serious injury, they are willing to bear their souls again in public for the common good. And it just tells you that this is a problem that we have all got to work on. I'm glad to hear your confirmation.

Thank you, Mr. Chairman.

Senator GORE. Well, we thank you again for your leadership.

Our next witness is Mr. George Reagle, Associate Administrator for Traffic Safety Programs at the National Highway Traffic Safety Administration, Department of Transportation. Welcome, Mr. Reagle. Without objection, your entire statement will be put into the record.

You may feel free to summarize in your oral presentation, but please begin by introducing your associate to the committee.

STATEMENT GEORGE REAGLE, ASSOCIATE ADMINISTRATOR FOR TRAFFIC SAFETY PROGRAMS, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY DR. JAMES NICHOLS

Mr. REAGLE. To my left is Dr. James Nichols, who has done a lot of pioneering research in the alcohol area since the Department became involved in 1966.

I am pleased to appear before you today, and I certainly compliment you for holding these hearings on this national effort to reduce the problem of drunk driving. Before I discuss the specific piece of legislation, let me discuss the status of drunk driving.

Although alcohol is still involved in a high percentage of all highway deaths, we have seen the benefits of numerous drunk driving countermeasures in the public and private sectors. The preliminary data for 1987 indicate that the downward trend in alcohol-related fatal crashes has continued, although at a slower rate. The proportion of fatalities involving alcohol intoxication fell to 40 percent, down from 41 percent in 1986 and 46 percent in 1982. By 1986, the latest year for which we have complete data, the proportion of drivers involved in fatal crashes who were legally intoxicated has dropped by 14 percent from the 1982 level.

Over this same period, the most significant improvement occurred in the proportion of teenage drivers in fatal crashes who were legally intoxicated. This proportion dropped by 26 percent. As the result of Congress' enactment in 1984 of a law making 21 the national uniform minimum drinking age, all 50 states and the District of Columbia now have adopted this most important safety measure. Our preliminary estimate is that these laws saved the lives of about 1,000 people in 1987 and have saved some 4,400 lives since the drinking age law began to be raised in 1982.

Another Federal law which came into effect during this period is section 408 of title 23, the grant program for alcohol safety programs. Under section 408, a state becomes eligible for a basic grant by adopting four measures: prompt suspension of license, mandatory confinement or community service for a second conviction within five years, establishment of a blood alcohol content of .10 percent as a per se violation, and increased enforcement and education efforts. We agree that those are important elements of a comprehensive, effective program to combat impaired driving.

The 17 states which have improved their programs to the point of meeting this broad range of requirements has achieved significant improvements in their drunk driving programs. States that have improved their programs to the point of qualifying for section 408 alcohol safety incentive grants have made more progress as a group in reducing the proportion of their intoxicated driver fatalities than states that have not qualified for these funds. All in all, the section 408 program has helped

to stimulate a number of effective measures to reduce drunk driving and has thus made a useful contribution to the comprehensive attack on the drunk driving problem.

It is also important to recognize that other states have made commendable progress in addressing the menace of drunk driving even if they have not met all the section 408 criteria. New York's Stop DWI program, for example, established financially self-sufficient local programs around the state to combat drunk driving along with stronger penalties for those convicted of the offense. While New York does not meet the prompt suspension criteria of section 408, the state's program is, nevertheless, a model in many other respects.

Having said this, I must now tell you that we do not support the enactment of S. 2549. While the bill is in several respects similar to the section 408 program, it appears to duplicate part of the 408 program and is less flexible. Individually, most of the concepts behind the bill have merit, and some have already been adopted as part of the state's response to section 408. It is our view, however, that the bill may accomplish little that has not already been accomplished by section 408 and that it might have the result of requiring the award of grants to states for programs of lesser scope and effect than those provided by 408.

Let me illustrate these points by focusing on the principal element of S. 2549, the criterion for administrative suspension and revocation of the license. We believe that the administrative system is a good one and we have strongly encouraged the adoption by all the states, but we do not believe that S. 2549 will induce additional states to adopt such a system.

This brings us to the first problem of that bill which would require a final action on suspension or revocation to occur within 15 days, far less than the period specified under the existing section 408 criterion. We believe that there are only two groups of states that could conceivably meet a 15 day criterion: a small group of states, perhaps only two or three, which already qualify for section 408, and an even smaller group, perhaps only one, which have very quick license suspensions but which have failed to meet other criteria of the broader and more comprehensive section 408 program.

With respect to the first group, the bill would result in a substantial bonus for work that we believe has already been accomplished under section 408. With respect to the second group, the bill would reward programs of narrower scope than thought desirable under section 408.

We believe that measures for dealing with multiple offenders, such as those in 408, are essential to any comprehensive and balanced program.

I have already suggested our second concern with S. 2549: it's narrow scope. We do not question the effectiveness of administrative revocation, but we do believe that an effective alcohol safety program must have several integrated components. We intend to continue working with the states on section 408 as their programs mature and to encourage the extension of these states' programs to additional states.

As a second condition for eligibility for a basic grant, S. 2549 would require a state to have a self-sustaining drunk driving enforcement program under which fees from offenders would be returned to communities with comprehensive drunk driving programs. The bill also provides supplemental grants for which states would be eligible upon their adoption of mandatory blood alcohol testing for drivers involved in fatal crashes and their establishment of an effective program for preventing drivers under age 21 from obtaining alcohol.

Although we believe that these measures have the potential to improve a state's drunk driving program, we believe that the youth program in particular should be part of a more comprehensive effort that could include such measures as provisional licensing, lower alcohol concentration for violation of per se laws, training in false ID recognition, and overall emphasis on enforcement.

In the coming years, the National Highway Traffic Safety Administration will continue to emphasize programs that increase both the perception and the reality that drunk drivers will be detected and punished. We continue to believe that the public's belief in the certainty of punishment, a phenomenon we call general deterrence, is a key to reducing drunk driving.

In addition, we will continue our efforts concentrating on prevention and intervention and renewing our efforts with the TEAM coalition, Techniques for Effective Alcohol Management. In that regard, we will be working with several local coalitions to build long-term sustained drunk driving programs at the community level.

Our resolve is to use every possible means to keep public attention focused on the dangers of drunk driving. We must constantly develop new initiatives, such as the TEAM program. The future success of the drunk driving program depends on the continual involvement of all people at every level of the public and private sectors.

I want to personally thank you for holding these hearings and helping us to keep the drunk driving problem and its potential solutions before the public.

My colleague and I would be most happy to answer any of your questions, Mr. Chairman.

Senator GORE. Thank you.

I mentioned earlier that Senator Danforth is a cosponsor of the bill. Do you have an opening statement?

OPENING STATEMENT BY SENATOR DANFORTH

Senator DANFORTH. Mr. Chairman, thank you very much. I do have an opening statement which I will not read and ask that it be submitted in the record.

I want to express my apologies and really embarrassment to all because it happens that on the same afternoon that this bill is before us, the trade bill is going to be on the floor of the Senate. And that is something that I have been involved in for years, and I'm going to have to be there.

I especially want to apologize to Colonel John Ford who is the new Superintendent of the Missouri State Highway Patrol. I think John Ford took office on Friday. And this is, therefore, one of his first acts to come here and testify before this subcommittee. I have known Colonel Ford for the better part of 20 years, and it is really good to have him here with us.

Mr. Chairman, the idea of administrative revocation of drivers' licenses is critical to dealing with the problem of drunk driving. Drivers license suspensions really should not depend on criminal proceedings. Who is issued a driver's license and for whom one is revoked is really an administrative question, not a criminal question.

The problem with using the criminal law as a condition precedent to the revocation of a driver's license is that there is so much discretion in the criminal process. A prosecutor can decide not to prosecute. A judge or a jury can decide not to convict. It seems to me that the question of whether or not a person holds a driver's license should really be a matter that is determined on a more simple and straightforward basis than going through the entire criminal process. And that is what this legislation is all about.

I strongly support it. I really think that this is a major step towards safer highways, and I appreciate your holding this hearing.

Mr. Chairman. In 1982, 25,170 Americans were killed in alcohol-related crashes. Beginning in 1982, Congress began passing laws to encourage the states to get tough with drunk drivers. The States have gotten tougher. The numbers reflect this. In 1987 there were an estimated 23,600 alcohol-related fatalities, a decrease of 7 percent.

We cannot be satisfied with this small improvement in the drunk driving problem because there is real human tragedy behind the numbers. On May 14, a drunk driver got on a Kentucky interstate going the wrong way. He drove head on into a church activity bus. He sent 27 innocent people to a horrible death in a burning bus. All because he decided to drink and drive.

On April 28, 1987, in St. Thomas, Missouri, a drunk driver of a pickup crossed the center line into the path of another pickup killing an 83 year old man and his nine year old granddaughter. The granddaughter, Roni, would have been 10 two weeks ago.

We cannot view these tragedies as something we simply must accept. The efforts of Mothers Against Drunk Driving are an example of how we can fight this problem. Many of MADD's members have lost friends or relatives at the hands of a drunk driver. This organization has made the public realize that drunk driving is not a victimless crime.

This change in public attitude has made it possible for those of us in Congress and in state legislatures to pass stronger drunk driving laws. The latest Congressional effort in this area is the "Drunk Driving Prevention Act of 1988." Senator Lautenberg and I, along with Senator Gore and others, have introduced this bill to encourage states to adopt tough drunk driving measures. Among other things, it would encourage states to pass administrative per se laws under which police officers can confiscate drunk drivers' licenses at the point of arrest. The advantage

of such a system is that it takes the decision on suspension or revocation of the drunk driver's license out of the courts—where years of delay can occur—and puts it before an administrative hearing officer who can quickly decide the matter.

Thank you again, Mr. Chairman, for calling this hearing so that we can explore solutions to the drunk driving problem.

Senator GORE. Mr. Reagle, you didn't read this portion of your statement, but in the written text you say, "We strongly encourage the states to adopt administrative systems for license suspensions." That is your position. Correct?

Mr. REAGLE. Absolutely, yes, sir.

Senator GORE. So, you think the mechanism, the remedy, in the bill is at bottom the right approach. Correct?

Mr. REAGLE. Yes, sir. We have seen from many studies that administrative per se is a very powerful sanction. Yes, sir.

Senator GORE. So, there is no disagreement on that point.

Mr. REAGLE. No, sir.

Senator GORE. But you think if the states take your advice and adopt this administrative system for license suspension, that it would save lives?

Mr. REAGLE. Absolutely.

Senator GORE. And do you think it would be the single most effective measure against drunk driving?

Mr. REAGLE. Let me clarify that. I think there are several things that a state must do to have a comprehensive, effective program. Certainly a cornerstone of that would be administrative per se.

Senator GORE. And among all the separate measures, does the research, such as it is, indicate that that's the single most effective measure?

Mr. REAGLE. One could make that case, yes, sir.

Senator GORE. Okay. But you're not for the bill because you prefer to verbally encourage the states to do this by telling them it's a good idea rather than giving them any meaningful encouragement.

Mr. REAGLE. Let me respond in two ways. My first problem is if you look at the bill, the specifics of the bill say that between the time the person is arrested and the time the license is suspended is 15 days. I think the data from other states would tell all of us that is too short a period of time.

Senator GORE. What time period would you recommend?

Mr. REAGLE. Well, in 408 we have 45 days. That is really pushing them. So, if we want to set ourselves a goal of getting all the states who don't have administrative per se into the fold, I think 45 days really pushes them as it now exists under 408. Some states I think have testified in hearings held by other committees that 30 days made sense, but from my perspective, 45 days certainly is pushing them when we look at 408.

Senator GORE. The difference between 15 and 30 to 45—would that make the difference in the administration's supporting the bill?

Mr. REAGLE. I can't answer that, sir.

Senator GORE. Would it make a difference in you supporting the bill?

Mr. REAGLE. I think 30 days makes a difference, yes, sir.

Senator GORE. So, if it were 30 days instead of 15, you would support the bill.

Mr. REAGLE. That makes a difference, yes.

Senator GORE. So, that's the one critical point of disagreement you have with it.

Mr. REAGLE. The period of time from 15 days I don't think makes sense right now.

And when we look at the number of states, for example, that can have statutes where within 15 days the temporary license expires, there are only seven states now that allow that. So, I think one of the things we need to look at is if our goal is to get more states to have administrative per se, 15 days is not the period we would want.

Senator GORE. Senator Ford?

Senator FORD. Mr. Reagle, what we're doing here I think is trying to encourage the states to implement procedures in order to prevent drunk driving. Is that where we are headed here?

Mr. REAGLE. Yes, sir.

Senator FORD. I have been on that side of the procedures here, the laws that are written here, as it relates to states' rights. Every once in a while I kind of lean toward superseding state laws on occasion; i.e., we voted the national age to secure alcohol, raised it up to 21. We had states with 18 and 19 and 20. And my state was 21, so that vote didn't bother me at all. I didn't have any problem casting that vote at home.

But the point I'm trying to make here is that we have now superseded the states with the drinking law. What is wrong with us implementing something on a national basis that would give us uniformity, that states would know what to expect, that we wouldn't be driving in Kentucky and have an age limit of 21, and cross the river in Ohio and have an age limit of 18, and come back across the other river and it's perfectly dry? You have to bootleg there, you know.

So, now what I am getting to is uniformity throughout the 50 states. Do you have any problem with that?

Mr. REAGLE. I think if it gets us the result we want, I certainly don't have a problem. But I think even if you look at the administrative per se laws that are out there now in all the states——

Senator FORD. I'm not a lawyer. Give me this per se business. That sounds like Spanish at the Democratic convention to me.

I'm having a little bit of a hard time.

Mr. REAGLE. Simply put it is——

Senator FORD. Simply put it, please.

Mr. REAGLE. Because I'm not a lawyer, so you and I should communicate.

Senator FORD. Well, good. If you can understand it, maybe I can.

Mr. REAGLE. Basically it empowers the police officer as part of the department of motor vehicles to apprehend or take the license of a driver who he suspects is at .10 or higher. One of the theories in the

drunk driving area is that if the sanctions can be sure and swift, that reaps us the kind of benefits we want. We have seen from many states that empowering the police officer to do that avoids the involvement of the judicial process, speeds up the sanction procedures and gets the kind of results we want.

Back to your question, sir, I think one of the problems we see is all the laws in all the states are a little bit different. In many of the states, the laws allow the person to request a hearing. And what S. 2549 says is that within a 15 day period, the person must request the hearing, have the hearing and have the license suspended. And I think what you will hear from my state colleagues in this hearing is that the 15 day period is too hard.

Senator FORD. There was a conference I believe last week of the legislators from the 50 states. It was a national legislative conference. And one of the sessions that was the most debated and the highest attended was this subject. And we find that one of the hottest debated issues—and I guess my state is involved in that—is that they return the license from daylight to dusk in order for the individual to go to work.

Did any of your people attend that legislative conference?

Mr. REAGLE. Not that I'm aware of.

Senator FORD. We're getting so frugal here we can't send you to important meetings.

I think that somewhere along the way, Mr. Chairman—I may be digressing a little bit—that we ought to have the input of our national association, and we ought to have some input into their thinking because I'm almost at the point where we supersede state laws because there is such a variation, and I would be hopeful that we might get involved in that some way or another and that rather than encourage—I don't know whether we have even got a stick in this or not. We just have a carrot. Is that right?

Mr. REAGLE. Yes, sir.

Senator FORD. And I have always found that if you had a stick, my children mind me much better than if I carry none at all.

And so, I would be very interested in you maybe—and I'm going to—to see if there was a record kept of that meeting such as we have here at ours and be able to listen or at least read——

Mr. REAGLE. I'd like to.

Senator FORD. That's all I have, Mr. Chairman.

Senator GORE. I might add for the record that there is a companion bill that Senator Reid and Senator Lautenberg have introduced which has a stick as opposed to a carrot. And the two approaches go together. It has been referred to a different committee, but also has a substantial amount of support.

Senator Danforth?

Senator DANFORTH. I have no questions, Mr. Chairman.

Senator GORE. Thank you very much for being here.

[The statement follows:]

STATEMENT OF GEORGE REAGLE, ASSOCIATE ADMINISTRATOR, TRAFFIC SAFETY PROGRAMS, NHTSA

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you today to discuss the national effort to reduce the problem of drunk driving.

At your request, I will address the legislation introduced by Senator Lautenberg, and cosponsored by Senator Danforth and others, to establish a new incentive grant program to help reduce drunk driving (S. 2549). To establish a context for our view on this bill, I will first give you a status report on the national effort to reduce the effects of drinking and driving, with a special focus on the effectiveness of measures which Congress and the states have already enacted.

Although alcohol is still involved in a high percentage of all highway deaths, we have seen the benefits of numerous drunk driving countermeasures in the public and private sectors. The preliminary data for 1987 indicate that the downward trend in alcohol-related fatal crashes has continued, although at a slower rate. The proportion of fatalities involving alcohol intoxication fell to 40 percent, down from 41 percent in 1986 and 46 percent in 1982. By 1986, the latest year for which we have complete data, the proportion of drivers involved in fatal crashes who were legally intoxicated had dropped by 14 percent from the 1982 level.

Over this same period, the most significant improvement occurred in the proportion of teen-aged drivers in fatal crashes who were legally intoxicated. This proportion dropped by 26 per cent. As the result of Congress's enactment in 1984 of a law making 21 the national uniform minimum drinking age, all fifty states and the District of Columbia have now adopted this most important safety measure. Based on the agency's estimate for the effectiveness of minimum drinking age laws, our preliminary estimate is that these laws saved the lives of about 1,000 people in 1987 and have saved some 4,400 lives since the drinking age laws began to be raised in 1982.

Another Federal law which came into effect during this period is section 408 of title 23, United States Code, the grant program for alcohol traffic safety programs, which Senator Lautenberg has used as the model for his new proposal. Under Section 408, a state becomes eligible for a basic grant by adopting four measures: prompt suspension of licenses for a period of not less than 90 days (30 days of which must be absolute suspension) for first offenders and one year for repeat offenders, mandatory confinement or community service for a second conviction within five years, establishment of a blood alcohol content of .10 per cent as a per se violation, and increased enforcement and education efforts.

We agree that those are important elements of a comprehensive, effective program to combat impaired driving, and we have strongly supported their adoption and implementation at the state level. The efforts by the states to meet these Section 408 criteria, along with other ongoing efforts to review and improve alcohol countermeasures, have contributed substantially to the inroads we have begun to make in reducing the problem of impaired driving.

The seventeen states which have improved their programs to the point of meeting this broad range of requirements have achieved significant improvements in their drunk driving programs. States that have improved their programs to the point of qualifying for section 408 alcohol safety incentive grants have made more progress, as a group, in reducing the proportion of their intoxicated-driver fatalities than states that have not qualified for these funds. Most of the states qualifying for the basic Section 408 grants have also qualified for supplemental grants by adopting measures such as rehabilitation and treatment programs, statewide recordkeeping programs to identify repeat offenders, the establishment of financially self-sufficient local programs, and the granting of presentence screening authority to the courts. Those states have also been able to make effective use of the financial assistance obtained under Section 408, by funding projects to improve the training of police and to support enforcement programs through improved public information and education campaigns.

All in all, the Section 408 program has helped to stimulate a number of effective measures to reduce drunk driving and has thus made a useful contribution to the comprehensive attack on the drunk driving problem. It also represents a move away from the use of sanctions to ensure long-term and systematic state action, a move which we strongly support.

It is also important to recognize that other states have made commendable progress in addressing the menace of drunk driving, even if they have not met all of the Section 408 criteria. New York State's "STOP DWI" program, for example, established financially self-sufficient local programs around the state to combat drunk driving, along with stronger penalties for those convicted of the offense. While New York does not meet the "prompt license suspension" criterion of Section 408, and thus does not qualify for the Federal incentive grants, the state's program is nevertheless a model in many other respects.

Based on our experience in administering the Section 408 grant program, we have some observations on how a Federal incentive grant program on drunk driving should be structured: It should include only general criteria, which are not overly detailed, so that states are not disqualified for minor deviations. It should recognize that there are many aspects to the problem and various countermeasure approaches, to avoid diverting attention and resources into a single program. It should permit flexibility among the states in the overall design of their drunk and drugged driving countermeasure activities, in recognition of their differing sizes and governmental structures, and in the interests of Federalism. The relative inflexiblity of the Section 408 program, as currently implemented, has resulted in only one-third of the states qualifying for grants. We recently undertook a rulemaking effort to ease restrictions which resulted from our implementing regulations, which we hope will help additional states to qualify, but we cannot alter the statutory criteria themselves.

Having said this, I must now tell you that we do not support the enactment of S. 2549. While the bill is in several respects similar to the Section 408 program, it appears to duplicate part of the 408 program and is less flexible. Individually, most of the concepts behind the bill have merit, and some have already been adopted as part of the states' response to Section 408. We strongly encourage the states to adopt administrative systems for license suspensions and to develop self-sufficient funding mechanisms for their programs. It is our view, however, that the bill may accomplish little that has not already been accomplished by Section 408, and that it might have the result of requiring the award of grants to states for programs of lesser scope and effect than those provided by Section 408. It will not help the majority of states which do not already have the capacity to quickly process suspensions and revocations.

Let me illustrate these points by focusing on the principal element of S. 2549: the criterion for administrative suspension and revocation of licenses. Under the bill, a state would become eligible for a basic grant by adopting an enforcement program in which the arresting officer would have authority to take an offender's license on the spot and issue a notice of license suspension or revocation. Although the suspension or revocation could subsequently be determined by a judge, it would in all likelihood be made instead by an administrative hearing officer. This program thus incorporates a system of administrative revocation which has been widely accepted as an effective means of reducing drunk driving.

We believe the administrative system is a good one and we have strongly encouraged its adoption by all the states, but we do not believe that S. 2549 will induce additional states to adopt such a system. Those states which have sought Section 408 grants have generally found that they could not meet the "prompt suspension" criterion (which we define as 45 days, or 90 days if the state has a plan to move to 45 days) unless they adopted an administrative system. Of the 16 states presently qualified under Section 408, 11 have met the "prompt suspension" requirement through the adoption of administrative systems. Thirteen other states have adopted administrative systems but have not qualified under Section 408 either because they are still not able to suspend licenses within the period defined for "prompt suspension" or because they have failed to meet other criteria. Along with the related criterion that the suspension be absolute for the first 30 days, with no "hardship" exemptions, the prompt suspension criterion has been a significant barrier to additional states qualifying for Section 408 grants.

This brings up the first problem with S. 2549: the bill would require a final action on suspension or revocation to occur within 15 days, far less than the period specified under the existing Section 408 criterion. We believe that there are only two groups of states which could conceivably meet a 15-day criterion: a small group of states (perhaps only two or three) which already qualify for Section 408 grants, and an even smaller group (perhaps only one) which have very quick license suspensions but which

have failed to meet other criteria of the broader Section 408 program. With respect to the first group, the bill would result in a substantial bonus for work that has already been accomplished under Section 408; with respect to the second group, the bill would reward programs of narrower scope than thought desirable under Section 408. We do not regard either outcome as desirable or effective in reducing drunk driving.

We believe that measures for dealing with multiple offenders, such as those in Section 408, are essential to any balanced program. We also question the incremental impact on safety of reducing the time from 45 days to 15 days, even if it were practicable for the states to do so. In our view, and that of many of the states which have met the Section 408 criteria, a revocation or suspension within 45 days, and a requirement that at least 30 days of the suspension be "hard," create the deterrent effect which the prompt suspension criterion was intended to achieve.

I have already suggested our second concern with S. 2549: its narrow scope. We do not question the effectiveness of administrative revocations, but we believe that to be effective an alcohol safety program must have several integrated components. The states have made significant progress in all aspects of their alcohol programs since 1980, largely in response to the growing public awareness of the seriousness of drunk driving. Grass-roots organizations such as the Mothers Against Drunk Driving have been instrumental in focusing public attention on the problem. Section 408 has helped to highlight specific solutions, and may yet reach additional states. We intend to continue to work with the Section 408 states as their programs mature and to encourage the extension of these states' programs to additional states.

As a second condition for eligibility for a basic grant, S. 2549 would require a state to have a "self-sustaining drunk driving enforcement program" under which fees from offenders would be returned to communities with comprehensive drunk driving programs. The bill also provides for supplemental grants, for which states would be eligible upon their adoption of mandatory blood alcohol testing for drivers involved in fatal crashes and their establishment of an effective program for preventing drivers under age 21 from obtaining alcohol. Although we believe that these measures have the potential to improve a state's drunk driving program, we believe that the youth program, in particular, should be a part of a more comprehensive effort that could include such measures as provisional licensing, lower alcohol concentrations for a violation of per se laws, training in false ID recognition, and an overall emphasis on enforcement.

In the coming year, NHTSA will continue to emphasize programs that increase both the perception and the reality that drunk driving will be detected and punished. We continue to believe that the public's belief in the certainty of enforcement—a phenomenon we call "general deterrence"—is a key to reducing drunk driving; accordingly, we will continue to stress public information and education programs as a part of every enforcement program. In addition to modifying the rules implementing the section 408 program, we are also increasing our activities in other respects. One example is the comprehensive effort called Techniques for Effective Alcohol Management—TEAM—whose goals are to develop sensible alcohol policies for professional sports events and to enable arenas to act as role models for community actions against drunk driving. TEAM is an outstanding example of public and private sector cooperation in the effort to combat drunk driving. We believe that the local coalitions being formed as part of the TEAM effort will, in the long run, form the basis for long-term systemic changes at the community level. For the coming year, we hope to concentrate on forming these local coalitions as well as on enlisting the cooperation of the National Football League in the TEAM program. Other agency activities include training for police in detecting impaired drivers and for prosecutors and judges in handling these cases, developing strategies to communicate the dangers of alcohol and drug abuse to high school students, and continuing our cooperative efforts with organizations such as Mothers Against Drunk Driving (MADD), Students Against Drunk Driving (SADD), and Remove Intoxicated Drivers (RID).

Our resolve is to use every possible means to keep public attention focused on the dangers of drunk driving. We must constantly develop new initiatives such as the TEAM program. The future success of the drunk driving program depends on the continued involvement of people at every level of the public and private sector. I want to thank you for holding this hearing and helping to keep the drunk driving problem, and its potential solutions, before the public.

Mr. Chairman, this completes my prepared remarks. I would be happy to answer any questions you may have.

Senator GORE. We would now like to call the first panel of witnesses: Mr. Ronald Rumbaugh, President of the National Beer Wholesalers' Association in Falls Church, Virginia; Ms. Micky Sadoff, Vice President for Victim Issues of Mothers Against Drunk Driving; and Mr. Brian O'Neill from the Insurance Institute for Highway Safety. If all three of you would come forward. We certainly appreciate your willingness to help us in exploring this proposed legislation and that of Senator Reid.

And without objection, your entire prepared statements will be included in the record, and we will would like to hear from you now beginning with you, Mr. Ronald Rumbaugh, President of the National Beer Wholesalers' Association. Thank you very much for attending. And we are anxious to hear your testimony. Please proceed.

STATEMENT OF RONALD RUMBAUGH, PRESIDENT, NATIONAL BEER WHOLESALERS' ASSOCIATION

Mr. RUMBAUGH. Thank you, Senator. Mr. Chairman, members of the committee, I appreciate the opportunity to be here this afternoon.

As president and chief operating officer, I am representing the National Beer Wholesalers' Association which is made up of some 1,800 small business wholesalers around the Nation. Beer wholesalers have long been dedicated to the cause of moderation and responsibility in drinking. Our members are leaders within their communities in promoting local programs to combat alcohol abuse and to educate young people on the dangers of excessive consumption.

Beer wholesalers don't need the business of drunk drivers. We don't want their business. In fact, we want to put them out of business.

For that reason, the National Beer Wholesalers' Association supports the bill before the committee, S. 2549, the Drunk Driving Prevention Act. We applaud both the objectives of the legislation and the incentive approach which it takes.

It has never made sense to us to force states to adopt a particular highway safety measure by threatening to reduce Federal funds which are used to build and maintain safe highways and bridges and to train safety inspectors. This is counterproductive.

It is also presumptuous to believe that all wisdom in these matters resides in Washington. Many of the measures called for in S. 2549 are already on the books in some states. Conversely, some programs currently in operation at the state level are not a part of this bill.

Drunk driving is a serious and difficult social problem, and we need to be open to a broad range of ideas and approaches. States have had long experience in this field and their initiatives should be encouraged. The strength of the bill before you is that it is optional for the states and allows flexibility in how states approach the problem. If we could recommend any changes at all, it would be in the direction of even greater flexibility for the states and perhaps a grandfather provision for those states whose laws already address any of the measures called for.

On balance, however, the National Beer Wholesalers' Association believes this is a good bill and one which would make a positive contribution to removing drunk drivers from our highways.

Our support for this legislation is a natural extension of our members' efforts at the local level to combat alcohol abuse and promote safety. For instance, since 1983 the National Beer Wholesalers' Association has sponsored preventing alcohol abuse education programs in elementary and secondary school systems nationwide. This five-part, multi-media curriculum presents factual information on the physical and behavioral effects of alcohol consumption and the legal implications of drinking under age and drinking and driving. To date over 15,000 PAA curriculum units are in place in the Nation's schools with Wisconsin, Arizona, Florida, California, Texas and Kentucky topping the list of the most active states.

NBWA also inaugurated a pilot student assistance program and community student assistance program support groups to be spearheaded by beer wholesalers as another cooperative community effort designed to promote personal responsibility and respect for current laws.

In addition, wholesalers around the country are involved in coalition efforts such as the highly successful Take Aim program in Virginia and the We Care program in South Carolina which was, incidentally, the first of its kind in the country.

Among other types of programs undertaken or supported by beer wholesalers are the campus alcohol awareness weeks, taxi or designated driver programs, Students Against Drunk Driving, server and retailer training programs, special holiday programs, special public relations initiatives, as well as brewer-sponsored alcohol awareness programs, such as Anheuser-Busch's Operation Alert and its Know When to Say When campaign, Miller's Alcohol Information from Miller, Coors' Alcohol, Drugs, Driving and You, and peer leadership programs, among many others.

Indeed, a recent survey of our membership demonstrates that most state associations and wholesalers that responded participated in at least one public education or awareness program. We are quite proud of this fact from coast to coast and border to border.

Our country has realized a significant amount of progress in the fight against drunk driving and alcohol abuse in the last several years, but we have much work yet to do. The National Beer Wholesalers' Association is pleased to support this new forward step in that fight, and we urge that the committee favorably report this important bill.

Thank you for your attention, and thank you for giving me the opportunity to be here.

Senator GORE. Well, thank you, Mr. Rumbaugh. I want to congratulate the National Beer Wholesalers for your enlightened position. It is all too common on Capitol Hill to have an industry group come in to testify in strong and unyielding opposition to a piece of legislation that some in the industry might feel has some kind of monetary impact on them. And it is too rare, but always refreshing, to have a business association come in and adopt a leadership position as part of the com-

munity demonstrating a concern that is much larger than the narrow focus that some have. And we just really appreciate the approach you all have taken on this legislation.

Mr. RUMBAUGH. Thank you, Senator.

Senator DANFORTH. Mr. Chairman, if you would just permit me to add on to that. I agree with everything you have said. And I notice that in today's Washington Post the National Beer Wholesalers' Association has taken out an ad, a message to drunk drivers, "We don't need your business. We don't want your business. In fact, we want to put you out of business," in support of this legislation. And I want to express to Mr. Rumbaugh my appreciation for your testimony and for the support of your association.

Mr. RUMBAUGH. Thank you, Senator. We believe this will be picked up by other state organizations representing our industry and carried nationwide in many newspapers throughout the country.

Senator GORE. Well, it's an important step for your industry to take. It really is. And I think it signals the beginning of a new phase in the Nation's approach to drunk driving and a new degree of consensus and a new level of seriousness and responsibility in approaching the problem. Again, I think you are to be commended.

We are going to save questions for you until the other two panelists have also testified. And let me tell our other two panelists that we have a vote on the floor. It will not last long, but we are going to take a temporary recess of about 9 or 10 minutes, and then we will come back and resume the hearing with Ms. Sadoff.

[Recess]

Senator GORE. We will come back to order here.

Before going to you, Ms. Sadoff, I want to recognize the Chairman of the full committee, Senator Hollings.

The CHAIRMAN. Thank you very much, Mr. Chairman.

Let me commend Mr. Rumbaugh. I have been 40 years in government, and I am beginning to see some progress.

The CHAIRMAN. Our beer wholesalers are our best citizens. I know firsthand.

I was just glancing over your statement, Mr. Rumbaugh, discussing the various initiatives by the beer wholesalers. In my hometown the Budweiser dealer and the leading TV station combine together at New Years and you call and they will get you a ride home. And it works extremely well. You've got no reason to be out partying and celebrating the New Year and then be engaged in drunk driving.

And I commend you for the support of this bill and its thrust. I support it.

And I'm just frustrated. Senator Danforth and myself put in a bill back in 1982, the 408 sections. And we've got 17 states eligible for section 408 grants, and we have had good experience, but yet we are told by the National Transportation Safety group that the 408 requirements are too stringent. And I heard they might be opposing this bill because it is too stringent of some kind and we ought to liberalize some of the rules. I don't know.

I know there is a practical problem, and it has been out there over the years. If someone is caught driving while intoxicated, he immediately goes to the lawyer and says, look, I'm going to lose my living. I can't feed my family unless I can drive. Well, he's going to lose his life or somebody else's when he is driving drunk. And we have just refused at the local level to really face up to it.

But with the experience of those 408 sections and those 17 states, we have made I think tremendous progress. And, if there is any way we can fashion this bill to be a realistic one to attract more states on board, I'm for that and I'm listening.

But I particularly wanted to commend you, Mr. Rumbaugh and our beer wholesalers because they have been the best of citizens in my state and I always wondered why they were so active in all of the different programs there, not being active up here, and in ducking the issue. I can you see you haven't done it, but you have confronted it and supported it. And I commend you for it.

Mr. RUMBAUGH. Thank you, Senator.

The CHAIRMAN. Thank you, Mr. Chairman.

Senator GORE. You are most welcome. Thank you.

Ms. Sadoff, I mispronounced your name earlier. I apologize. I think everybody is aware that no group has done more in provoking a national awareness of this problem then Mothers Against Drunk Driving. The entire Nation is indebted to your organization. We are delighted to hear from you once more.

STATEMENT OF MICKY SADOFF, VICE PRESIDENT FOR VICTIM ISSUES, MOTHERS AGAINST DRUNK DRIVING

Ms. SADOFF. I appreciate it.

Mr. Chairman, my name is Micky Sadoff. I am national vice president for victim issues of Mothers Against Drunk Driving, a 1,100,000 member organization composed of drunk driver victims and their supporters. Our national president, Norma Phillips, is out of the country or she would certainly be with you today.

As you know, we are striving to change public attitudes and behavior concerning drinking and driving, thereby saving lives. And legislation to promote effective DWI countermeasures on both the state level and the Federal level is a vital means of accomplishing that goal.

We have an opportunity today to address this goal through Federal legislation to promote some of the most effective anti-drinking and driving countermeasures available to enhance this effort. S. 2549 introduced by Senators Lautenberg, Danforth, and cosponsored by you, Mr. Chairman, and Senator Bentsen, will provide incentives to states to implement these effective countermeasures.

The cornerstone of S. 2549, which MADD has made our top legislative priority, is administrative license revocation. This countermeasure has a proven track record as the most effective sanction in reducing driver involvement in fatal crashes. Recent research by the Insurance Institute for Highway Safety has borne out the fact that driver involvement in fatal crashes has been reduced by 9 percent under this sanc-

tion. Twenty-three states and the District have this measure, and if all states passed administrative revocation, many more drivers might be prevented from fatal involvement in fatal crashes and many more lives would be saved as a result.

In my home state of Wisconsin, administrative suspension was enacted on January 1. Preliminary estimates show a 13.4 percent drop in arrests for driving under the influence from January to June compared to January to June in 1987. Law enforcement officers attributed this to the deterrent effect. Immediate loss of license is a real threat to all drivers.

An administrative revocation system offers some valuable improvements in the enforcement system while still protecting due process rights. Under administrative revocation, an officer still must have probable cause to stop a suspected offender. When someone is stopped and refuses or fails the BAC test, the license can be taken immediately, but the individual still has the right to request an administrative hearing to regain the license.

However, the revocation goes into effect after that short time period, rather than after the average delay of 120 days under the court-applied suspension. This is a public health issue. If you inspect a restaurant and discover botulism, you close the restaurant down immediately. You don't let it operate until it reaches the courts.

Under administrative revocation, the consequences are more closely connected with the offense, the sanction applied more swiftly and the DWI enforcement is enhanced. Most important, fatal crash involvement is reduced because drinking drivers are taken off the road more quickly.

One defendant first arrested for drunken driving in November 1985 pled guilty. He was fined $400 and given court supervision for one year. His driver's license was not revoked. When he was arrested again in May of 1986, the stakes were higher, so he hired an attorney. The strategy was to stall. This case dragged on for 19 months during which time he had 17 court dates before 4 different judges. All the while he continued to drive with a valid driver's license.

By February 5, 1987, after eight continuances granted by the defense, the offender agreed to plead guilty. However, he failed to appear at a March 27, 1987 hearing. After three more continuances, the trial was set for September 16, 1987, and again he failed to appear. After two more continuances, the defendant pled guilty in January 1 of 1988.

The sentencing was set for February 17, 1988. He was sentenced to 30 days in jail, one year probation and fined $88. Two years and three months after his first drunk driving arrest, he finally lost his license.

Other key elements of S. 2549 include the development of self-funded DWI systems based on the successful New York State Stop DWI program. Under this system, the problem of long-term funding for DWI enforcement is solved by funding from the most logical source: the drunk driving offender. In New York more than $15 million was generated annually by 1985 from DWI fines and channeled back to local enforcement programs which incorporated a comprehensive plan to deal with drunk driving.

The supplemental grants under S. 2549 would add further improvements to the DWI enforcement process. To qualify for these funds, states would need to mandate testing of all drivers in fatal or serious injury crashes where there is probable cause that an alcohol offense had occurred.

This measure is vital to further clarify our understanding of the DWI problem through the more accurate figures on alcohol involvement. It would also make available to the judicial process important evidence where a DWI offense had occurred.

Implementation of an effective system for enforcement of the 21 drinking age law would also qualify states for supplemental incentive funds. A system could include such elements as the color-coded driver's license to distinguish those easily under 21.

Finally, S. 2549 would provide for a study by the National Academy of Sciences to determine a more appropriate level at or above which an individual would be considered to be driving under the influence. This would be similar to the study conducted recently for the Federal Highway Administration concerning an appropriate BAC level for commercial operators. Although most states do set a BAC limit at .10, research already indicates that serious impairment occurs below that level.

Our Nation was reawakened to the needless tragedy suffered daily when a drunk driver crashed into a busload full of young people in Kentucky. In fact, this past weekend, a Mothers Against Drunk Driving crisis team was again in Kentucky at the request of victims' families, helping them to cope with the far-reaching effects of such a tragedy.

The alleged drunk driver was first arrested in 1984. Swift and sure penalties then may have prevented such a tragedy from occurring.

Mr. Chairman, we in MADD commend you and the sponsors of S. 2549 for their concern about drunk driving and their leadership in support of this measure. We believe in the potential of S. 2549 to encourage the adoption of these vital measures across the country. As the most widely abused drug in America, alcohol continues to kill an average 65 people a day and injure thousands on our streets and highways which is why we feel such an urgency about promoting effective, well-researched countermeasures to deal with this problem.

I would like to mention my own family's experience with a repeat offender drunk driver which prompted my involvement with MADD. My husband and I were driving on a Saturday night and were hit head-on by a gentleman who crossed the center line nearly killing four parents. Thankfully we survived. And I look back on it and I believe that—he had been a repeat offender—if maybe the sanctions had been swift and sure, such as administrative revocation in place, maybe he would not have been driving drunk that evening. Our crash didn't have to happen. It was not an accident.

We can and have made a difference in saving lives on our highways.

And we thank you for your continuing care and concern.

Senator GORE. Thank you very much. Again, we will hold questions until the panel is concluded.

Our last witness on this panel is Mr. Brian O'Neill with the Insurance Institute for Highway Safety based here in Washington. Mr. O'Neill, welcome. Please proceed.

STATEMENT OF BRIAN O'NEILL, INSURANCE INSTITUTE FOR HIGHWAY SAFETY

Mr. O'NEILL. Thank you.

In the 1980s we as a society have reassessed our attitudes toward alcohol-impaired driving. As part of this reassessment, state lawmakers across the Nation have passed more than 700 pieces of legislation in the early 1980s aimed at this problem. New laws were enacted, old laws were toughened, and enforcement was stepped up. At about the same time deaths in crashes involving alcohol declined. But until recently we didn't know whether the decline was related to the adoption of the new legislation, we didn't know whether the new laws were effective and, if so, which kinds of laws were the most effective.

Now we do. As you have heard from other witnesses, the institute has recently shown from its research program that the most effective type of law is the one that requires administrative license suspension or revocation at the time a driver fails a chemical test for alcohol. Adoption of this kind of law reduces driver involvement in fatal crashes by about 9 percent. We now know that administrative license suspension laws are more effective than the other types of laws aimed at reducing the problem.

As effective as they are, though, they aren't yet widespread. Only 24 U.S. jurisdictions have them. Clearly we need encouragements to get this kind of law enacted in all jurisdictions.

Federal efforts in the past to cajole or coerce state legislators into enacting highway safety measures have had varied results. In some cases, such as the very recent and successful effort toward 21 year old purchasing ages for alcohol, Federal action was an important impetus.

The most effective of the three types of laws we studied requires administrative license suspension or revocation at the time of failing a chemical test for alcohol. Adoption of this kind of law reduces driver in involvement in fatal crashes by about nine percent during the late night and early morning hours when alcohol involvement in crashes is especially high.

One of the two other types of laws we studied makes driving with a blood alcohol concentration (BAC) above a specified threshold an offense Per se. The third kind of law mandates jail or community service for a first conviction for driving under the influence. The researchers found a positive but smaller effect following adoption of each of these kinds of laws. compared to the effect for administrative license suspension.

The implications of these research findings for policy purposes are important. We know now that administrative license suspension laws are more effective than other types of laws in reducing alcohol impaired

driving. As effective as they are, though, they aren't yet widespread. Only 24 U.S. jurisdictions have them. What we need are encouragements to get this kind of law enacted in all jurisdictions.

Federal efforts in the past to cajole or coerce state legislators into enacting highway safety measures have had varied results. In some cases such as the very recent and successful effort toward 21-year-old alcohol purchasing ages, federal action was an important impetus. Wyoming has just become the last of the 50 states to raise the drinking age, with the Governor publicly stating that holding out for a lower legal minimum age for purchasing alcohol "is not the kind of distinction by which we should be shaping our image or our future."

In the case of motorcycle use laws, on the other hand, the story is quite different. Federal lawmakers empowered the U.S. Department of Transportation to cut off highway funds to states without helmet laws. And legislators in virtually every state passed such laws. But when three hold-out states faced actually losing Federal funds for failing to enact helmet laws, the authority to impose such sanctions was removed, and as a result many states eventually abandoned or substantially weakened their motorcycle helmet laws.

So, what history tell us is that Federal sanctions are problematic. Sometimes they work; other times they don't.

Federal incentives, the carrot as opposed to the stick of sanctions, may be problematic too. For example, congressional action in 1973 allowed the U.S. Department of Transportation to increase Federal highway safety grants to states by up to 25 percent if a safety belt use law was passed. But the result wasn't heartening. Not a single state joined Puerto Rico in passing such a law.

Another example involves the alcohol traffic safety incentive grant program enacted by Congress in 1982 to, among other things, encourage prompt license suspension and other laws by offering supplemental grants. But only 11 states adopted administrative license suspension laws as a result of this Federal action. And now, six years later, fewer than half the states have such laws on their books.

This doesn't mean there shouldn't be Federal involvement in such programs. Quite the contrary. Without Federal involvement, some important state safety laws just wouldn't be on the books. So, whatever action the Federal Government can take to encourage or coerce states into adopting administrative license suspension laws should be taken.

What we don't need at this time is additional study to determine the blood alcohol concentrations at or above which people are impaired. The National Academy of Sciences has already studied this issue and concluded—and I quote—"performance on driving-related tasks decreases at any BAC above zero and crash risk increases sharply as BAC rises." This is a well-established scientific fact.

Some people claim that present thresholds defining impairment, which in the states now is typically .10 percent, should be much lower, perhaps even zero. At the present time this doesn't seem to be realistic. We shouldn't set BAC thresholds that probably wouldn't have public support and couldn't be effectively enforced. The fact is both alcohol

and driving are part of our culture. And for the foreseeable future, some mixing of the two is inevitable.

The question is how much mixing are we prepared tolerate. To address this, we have to know what the societal consequences are in terms of highway deaths and injuries when varying amounts of alcohol are consumed.

According to the most recent data on the blood alcohol concentrations of drivers who have been drinking, then are fatally injured on weekend nights, only 5 percent have low BACs—that's BACs below .05 percent—9 percent have moderate BACS, between .05 and .099, and fully 86 percent of the fatally injured drivers have BACs of .10 percent or more. In contrast, a roadside sample of drivers on weekend nights has shown that among those who have been drinking, 69 percent have low BACs, 20 percent have moderate BACs, and 12 percent have high BACs of .10 percent or more. Thus, the drivers with the very high BACs represent a small minority of all drinking drivers, about 12 percent on weekend nights, but are disproportionately represented, over 86 percent of the drinking driver fatalities.

It is this latter group of drivers, the drivers with the very high BACs, we want most to remove from our highways. So, it is this group on whom our laws and enforcement efforts should continue to be focused.

Public support is always important if laws are going to be effective. We don't want to run the risk of losing support in this case by setting unrealistically low BAC thresholds. And we don't want to dilute our already limited enforcement efforts by greatly expanding the number of offenders that the police are out looking for.

This doesn't mean that the present BAC thresholds defining drinking and driving offenses are optimum. It may be that a somewhat lower threshold, for example, .08 percent as in Canada and the United Kingdom, would be more appropriate. This is what needs to be studied. What BAC threshold is appropriate in the United States to achieve optimum enforcement and deterrence. This is the important question, not what blood alcohol concentration produces impairment. We know that. It is any amount above zero.

Thank you.

Senator GORE. Well, thank you very much. I certainly appreciate your contribution.

Your organization, Mr. O'Neill, has done research concluding that administrative suspension laws are more effective in reducing impaired driving than those setting per se illegal blood alcohol levels or mandatory minimum sentences for first offenders.

How did you arrive at that conclusion? It has been said several times that research demonstrates that the administrative suspension is the most effective approach. What research? How did you go about it?

Mr. O'NEILL. We took the fatal crash involvements from a several year period using the Department of Transportation's computerized file. We looked at the numbers of drivers involved in fatal crashes on a state-by-state basis, by time of day, day of week, in relation to the adoption of the different kinds of laws. We looked at the adoption of laws

that define the offense as driving above a certain BAC threshold, the so-called per se law. We looked at laws that called for jail or community service for first offenders. And the third major type of law we looked at was the administrative license suspension or revocation. And we compared changes in driver crash involvements by time of day and day of week in relation to the adoption of those laws.

It's a fairly complicated statistical procedure. I would be happy to submit the complete study for the record. But basically it showed that the adoption of the administrative license suspension or revocation type of law produced the biggest reduction in driver involvements, especially in the nighttime crashes when alcohol involvement is typically high.

Senator GORE. Are there other measures not covered by this bill that your information suggests ought to be encouraged with incentive grants to the states?

Mr. O'NEILL. The research over the years on creating a deterrent effect, because that is what we have to do—we have to seek to deter potential offenders from driving after they have consumed too much alcohol—strongly suggests that enforcement is the key. The greater the perception of the motorist that they will be caught and receive a sanction, the greater the deterrent effect.

Administrative license suspension and revocation laws aid in that process because they make it easier for the license to be removed. It is more certain. There are more license actions typically in the states—license suspensions or revocations in the states with these laws—because it is simply easier. It involves less time for the police. It doesn't involve the time consuming process of the criminal justice system. So, the penalty becomes more certain, and that has a very important deterrent effect. And deterrence is what we have to accomplish.

Senator GORE. Ms. Sadoff, we have heard suggestions that the 15 day time period for administrative suspension proceedings is unreasonably short. Would you object to lengthening that time period so that the states could qualify for these grants?

Ms. SADOFF. I wouldn't be comfortable setting a specific time period for the states. But the averages is 14 days, and the model for most of this legislation is Minnesota which has successfully had administrative revocation in place since 1976. And theirs is a 7 day waiting period, and it works quite well. I think the importance is that it is short, 30 days I think or less, to I get the message across that this is swift and sure punishment, that there is a logical consequence from your actions.

Senator GORE. Now, you have also expressed support for the part of the bill that requires the state programs to become self-funding through the use of fines and fees collected from drunk drivers. I think that is a good idea. I wonder whether or not it is really feasible within the three year time frame provided by this bill. I hope it is, but can you shed any light on that concern?

Ms. SADOFF. I know New York has done this so successfully that I think that the fact that you have a strong system in place could short-circuit some of the problems. You have their example to follow, and I think with that kind of help and looking to the way that they have

been able to administrate this, it certainly could be done in a reasonable amount of time.

There are other places that do similar kinds of user-funded options. San Jose, for example, has drunk drivers pay for the cost of their transportation to the hospitals, reimburse the ambulances. There are lots of things that are taking place, but nothing is as comprehensive or successful as New York.

Senator GORE. Mr. Rumbaugh, you and your group have been particularly effective in the area of public awareness. Why have you chosen to focus on that aspect of the problem?

Mr. RUMBAUGH. Well, public awareness—we go back to the very root cause. We believe if the people have an understanding through education, then legislation would not be necessary. On the other hand, there is a point in time where you must have quick and sure punishment for causing a problem. And we feel at this time that this bill is very necessary and very much needed to remove those people from the highways and from behind the wheels of automobiles and other vehicles.

Senator GORE. Very good. Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman. I would like to thank the witnesses for some very illuminating and important testimony here today.

Mr. Rumbaugh, we appreciate the involvement of your organization and look forward to your being more involved in many of the public awareness programs. I think a case could be made that there has been some lessening of public concern over drunk driving the last couple of years; whereas, although there has been a reduction in the problem, we are a long, long way from home.

Would you agree with that, Mrs. Sadoff?

Ms. SADOFF. Absolutely. I think that we need this kind of legislation. We need to continue public awareness efforts. That is our number one crime, that alcohol is the number one drug of choice. We can make a difference.

Senator MCCAIN. How do you account for the fact that there seems to have been some lessening in the public awareness? Would it be the attention span of the American people, which is notoriously short? Would it be the renewed or increased attention on the drug problem, or what?

Ms. SADOFF. Well, the drug problem is also a drunk driving problem. Thirty-three percent are driving under the influence of drugs and alcohol. So, we need to address both. And although alcohol is legal for those over the drinking age of 21, it is unfortunately the number one drug of choice for people under 21, and the leading cause of their death are drunk driving crashes.

I think that the efforts so far have been outstanding. We obviously need to do more, and this legislation, with the attendant and important publicity about the fact that you lose your license immediately, has made a difference in 23 states and will save lives.

We put together a task force of experts from all over the country and brainstormed about what would save the most lives, what piece of legislation was reasonable, well thought out, had a track record, and administrative revocation came to the top of the list. And that's why it is our number one goal. But I think without publicity and awareness, we can't save lives in the same way as you just pass legislation and don't publicize it.

Senator MCCAIN. Mr. O'Neill, do you agree that public awareness is not as high as it once was and as high it should be?

Mr. O'NEILL. There certainly has been a waning of public attention to this issue. As I pointed out in the testimony, over 700 pieces of legislation were passed in the early 1980s, and that legislation was often accompanied by a lot of media attention. This was a big media story in the early 1980s. It is not such a big media story now, and that is one of the problems I think and one of the reasons I suspect we are seeing a slow-down in the progress because research continues to show that the most effective laws are those that have a combination of enforcement and repeated publicity.

The public has to know what is happening out there, otherwise they will think that this is yesterday's issue. It has gone away. If people aren't telling them that the police are out enforcing the law and there is not visible publicity or effective publicity, unfortunately many people will fall back into their old bad habits of consuming too much alcohol and getting behind the wheel.

Senator MCCAIN. Just as an aside, I didn't know until I read the testimony that the driver of that bus in Kentucky was under the influence of alcohol. I had certainly read about safety related problems. Maybe a few years ago that would have been the big part of the story as far as his alcohol impairment was concerned.

I think the panel is in agreement from your testimony that the most effective legislative tools that have been developed so far are the administrative suspension and revocation laws. There are other tools that need to be implemented, but that is the single most effective one. Yet, according to testimony, only 22 of the states in this country have enacted those laws.

One, what do we need to do in order to get the other 28 states to enact those laws? And number two, will this legislation serve as motivation for enactment of those laws? Start with you, Mr. O'Neill and go over.

Mr. O'NEILL. Certainly I think that Federal encouragement, whether it is in the form of the carrot or the stick, should be a factor in encouraging the other states to adopt such laws. I'm not quite sure why there is resistance to this legislation or this type of legislation in some state. Although we have such legislation in 24 jurisdictions, it is mainly the smaller states. So, we don't have anything like half of the population covered by such laws. So, we really need to get these laws passed in some of the larger states because by definition if the larger states with more vehicles, we have a bigger piece of the problem there. So, things have to be done to spread this legislation.

Ms. SADOFF. I think part of the answer—and having worked on a local level in the state to help pass this legislation in Wisconsin—it is a difficult concept to explain. Twenty-one was easy to work with. You were for it or you were against it. But administrative revocation takes more time to explain all the ramifications. It has survived all constitutional challenges. There hasn't been a problem in that area, although that question is raised often. I think that it will take time to get people to understand the concept.

I think that it is user friendly. The officers seem to think it is a natural consequence of arresting someone and not letting them drive. When you tell people that someone who has killed or injured is out there with a valid license, they are appalled, just appalled. And yet, it is legal in so many states.

Senator MCCAIN. Mr. Rumbaugh, do you have anything to add?

Mr. RUMBAUGH. I would only add that, although I am not an expert in this area, I would say that any time you are promoting, we ought to look at it optimistically that not that we only had 22 states in the former program, but we ought to be looking at 50 states. And any incentive program that taps the genius of those at the state level as well for implementation or enactment of such administrative revocation is a resource that needs to be cultivated.

Senator MCCAIN. Thank you. I only have one more question, Mr. Chairman, on behalf of Senator Danforth who wanted to be here who has had a long interest in this and other drug-related problems related to transportation, public transportation, as well as private.

And I would like to ask the following question: studies indicate that up to 80 percent of drivers convicted of drunk driving continue driving without a license. When we catch a convicted drunk driver without a license, should we confiscate his car, his license plates, his registration?

And should this bill be modified to encourage states to pass laws providing for confiscation of vehicles or license plates?

Ms. SADOFF. MADD has a position that we do favor license plate confiscation for repeat offenders. We would have no problem with that.

Mr. O'NEILL. There is no question that many people who have their licenses suspended or revoked continue driving.

We should not misunderstand those statistics, however, and assume that therefore license suspension or revocation is ineffective, because although those people in many instances do continue driving again the evidence strongly suggests that they drive fewer miles and they drive differently and they are much safer drivers than they were before the sanction.

But certainly anything that we can do to make the punishment for driving with a suspended or a revoked license again more certain and more severe is probably going to be effective, because right now there is not much chance of being stopped if you are driving with a suspended or a revoked license.

So the risk is not that great, and that is a problem, and we need to address that also.

Mr. RUMBAUGH. I understand the gravity of the statistic, but I would take a little bit more flexible attitude. First of all under the premise that the guilty should be the ones that are punished, do you want lift a plate or the registration of a motor vehicle which the family depends on. The situation in a state like Wyoming, which is sparsely populated and employment is a long way away, differs from, say, metropolitan Washington where there is good public transit.

So you tend to be punishing not only the guilty but the innocent as well, the family members, or somebody who needs a trip to a hospital or what have you. While I agree with administrative revocation of the license, I think the license plateother, the sanction is a little more draconian than is necessary.

Senator MCCAIN. Thank you very much. Thank you, Mr. Chairman.

Senator GORE. I might just mention that the Reid bill to which we have referred several times today has a provision for revoking license plates and registration, as does Senator Lautenberg's other bill, S. 2367, after it was amended.

Well, we are going to have to move on. We may have additional questions in writing. But I want to thank all of you again for your testimony and your expertise and your courage in coming forward and helping us on this. Thank you.

Our final panel today is made up of Mr. John T. Hanna, who is Deputy Commissioner of the State of Virginia Division of Motor Vehicles, and Mr. Hanna appears representing the National Association of Governors' Highway Safety Representatives, and Col. John Ford of the Missouri Highway Patrol.

If both of you would come forward, we would be delighted to hear your testimony, and without objection we will put the prepared text into the record at this point. And Col. Ford, I want to advise you again that Senator Danforth is occupied on the trade bill which came up on the exact same day as this legislation, and therefore could not be here for the entire hearing.

We will begin with you, Mr. Hanna, representing the National Association of Governors' Highway Safety Representatives. We are delighted to have you with us, and please proceed.

STATEMENT OF JOHN T. HANNA, DEPUTY COMMISSIONER, STATE OF VIRGINIA DEPARTMENT OF MOTOR VEHICLES, REPRESENTING THE NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES

Mr. HANNA. I use an electro-larynx speaker. Can you hear that all right?

First of all, I want to say you are a magnificent group chairing very well. But you all certainly do talk funny.

As you have indicated, I am John T. Hanna, the Deputy Commissioner of the Virginia Department of Motor Vehicles, representing the National Association of Governors' Highway Safety Representatives.

We are affiliated with the National Governors Association and are concerned about all phases of highway safety. But especially that of driving under the influence of alcohol and drugs.

You have already heard the statistics relative to the national figures. I shall not give you those. But we are proud in Virginia to report that during 1987 the 418 alcohol-related fatalities decreased from 492 in 1986, a whopping 15 percent reduction.

Although we do not qualify for the 408 funds, alcohol-related crashes were down five percent, from 19,944 in 1986 to 18,898 in 1987.

Why did they occur? They occurred because of legislation. They occurred because of public information programs, sobriety checkpoints, education of police, conversion of thought among courts with seminars, and also with various programs for distillers and others.

It is a comprehensive overall program in our judgment that it has accomplished that objective. We have done it in partnership with 145 local highway safety commissions, with the National Highway Traffic Safety Administration, and other national organizations.

It is a true partnership, and we developed a new bill pertaining to driving under the influence of drugs. The statute was sharpened up considerably. And also a blood test can be required of those citizens apprehended operating under the influence, and the officers do administer that test. And so far as drug recognition technicians they have hit on 100 percent of the time.

Throughout the United States, states with the aid of the National Highway Traffic Safety Administration and 402 funding, have established 400 prevention programs and 600 drunk driving intervention programs nationwide.

Notable among those states are California and Massachusetts, which have instituted special programs such as, Friday Night Live for teenagers, emergency nurses' care, and also GUARDD for college and university students. These programs cover the full gamut.

Since 52 percent of fatal crashes involve alcohol, we believe the Federal Government must be involved in stopping drunk driving.

We also believe that Federal participation with states must continue because the public concern for drunk driving has leveled off.

I might add at this time that no program in highway safety in 40 years that I have been with it has ever had a sustained public interest wherein you can maintain public support of every program at all times. The public's interest rises and drops, depending upon various factors.

Presently, safety belts have come to the forefront, as has 65-mile per hour speed, and it was only natural that some of that attention for drunk driving would wane. But we must integrate these programs and continue to persist in the fight against drunk drivers.

We have reviewed S. 2549. We applaud Senator Lautenberg for his vision, his leadership, as well as Senator Danforth's position on the issues. This strong bill is straightforward and it is uncomplicated. We like that very much.

It is axiomatic that administrative per se bills are stronger than per se laws, and you have heard about the recent studies on these laws. We like their reliance on incentives. That is the way to go rather than sanctions. The states resent sanctions, the localities resent them, and to a degree the public resents them.

Now, although 2549 has considerable merit, we respectfully indicate four concerns that we hope that you will take into consideration.

One is, is the legislation properly timed? Because already in progress is a revision in the 408 alcohol incentive grant program rulemaking procedure.

Under this rulemaking, there may be some relaxing of the requirements and therefore an increase in the number of states that will participate.

A new program is being developed under 2549, while under the existing section 408 alcohol enforcement grant program, only $22.7 million of the $125 million authorized has been obligaazted, thereby making the unobligated funds a target for budget reductions.

Now we believe is the time to review the 408 program and determine if some statutory changes can be made so that more than 17 states can comply.

You have already heard that the 408 eligibility criteria may be a little stringent. Mr. Chairman, you personally have addressed the suspension factor, not more than 15 days as one eligibility criteria which could be relaxed, and the self-sufficiency criteria is perhaps another areone which could be relaxed.

We are also lastly concerned as to how 409 would be funded. If funds are to be taken from the highway trust fund, than funding for the section 402, 403, and the highway construction and rehabilitation programs may suffer.

So if we are taking funding away from one program and putting it into another, the overall benefits may not be manifest to the extent that we would like to see them.

Thanks for the opportunity to review the bill with your Committee.

[The statement follows:]

STATEMENT OF JOHN T. HANNA FOR THE NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES

Good afternoon. I am John T. Hanna, Deputy Commissioner of the Virginia Division of Motor Vehicles and I am representing the National Association of Governors' Highway Safety Representatives (NAGHSR). NAGHSR appreciates the opportunity to testify before the Commerce Committee on the Important issues of drunk driving and federal alcohol incentive grants. The members of NAGHSR are responsible for administering a wide variety of state highway safety programs. The Association, which is affiliated with the National Governors' Association, is concerned about all aspects of highway safety, such as occupant protection, excessive speed, truck safety, and pedestrian safety. Drunk driving has been and will continue to be a major concern of the Association's members and a major focus of its activities.

ALCOHOL-RELATED TRENDS AND STATUS OF STATE PROGRAMS

In 1967, the Eno Foundation for Highway Traffic Control published a report on a national symposium on traffic safety which had been held in Washington, DC, the previous year. Two speakers at the symposium discussed the issue of drunk driving as follows:

"Mr. VERSACE. Do I understand you to say that if these people (drunk drivers) were allowed to continue to drive that the accident picture would remain substantially the same?

"Mr. REECE. Yes. Is there any evidence that this is true? I am trying to research the point as to whether it is truly rational for statutes to exist, unsupported necessarily by scientific data, prohibiting alcoholics from driving. I suspect that such statutes are based on simple, general prejudice that drunks should not drive. From recent research of a scientific and psychological nature, this general conclusion in fact cannot be substantiated. . . ."

Fortunately, our attitudes about drunk driving have changed since that time and our research about the problem has immeasurably improved. As a result, significant progress has been made in reducing the number of alcohol-related injuries and fatalities in this country. According to the recently-released "Fatal Accident Reporting System (FARS) 1986 Annual Report," alcohol use by drivers involved in fatal accidents has steadily declined over the last 4 years. The proportion of drivers with any alcohol involvement (defined as a blood alcohol concentration of .01 or above) who were involved in a fatality decreased 13 percent from 1982 to 1986, as did the proportion of drivers involved in a fatality who were legally intoxicated (defined as a BAC of .10 or more). The FARS report further indicates that while the proportion of all drivers who were killed increased by 8 percent from 1982–86, the proportion of legally intoxicated drivers killed decreased by 11 percent. Additionally, the FARS data shows that the total number of alcohol-related fatalities in 1986 was 5 percent less than the total number in 1982, although 3 percent higher than the total number in 1985. A breakdown of the data further reveals that the proportion of intoxicated drivers involved in fatal crashes declined over the 4-year period for all age groups, but the most marked decline was for teenagers and senior citizens. State governments have also significant progress in developing programs to combat drunk driving. According to a recent report jointly prepared by NAGHSR and the National Association of State Alcohol and Drug Abuse Directors (NASADAD) which was funded by a project grant from the National Highway Traffic Safety Administration (NHTSA), the states have established more than 400 programs to prevent drinking and driving and more than 600 drunk driving intervention programs.

Many of the programs are funded with Section 402 State and Community Highway Safety grants (23 U.S.C. 402), and many are innovative. California, for example, has implemented a prevention project known as Friday Night Live. It consists of a 15-minute, multi-image slide show aimed at teenagers, curriculum packets for teachers, and a variety of related activities (such as the formation of student action groups, the identification of a faculty advisor, and the provision of organizational and developmental assistance for the student action groups). To date, the program has been adopted by six counties. In Massachusetts, two innovative prevention programs have been developed. One—the Emergency Nurses CARE program—is a comprehensive alcohol awareness and educational program primarily created for junior and senior high school students which is operated by emergency department nurses. The second program—GUARDD— is oriented to college and university students and was initiated in response to Governor Dukakis' concern about alcohol-related accidents and fatalities. The program operates through the collective efforts of the Executive Office of Public Safety and the Governor's Highway Safety Bureau and provides technical assistance and resources to college communities across the state. As-

suming that Congress does not reduce the level of 402 funding over the next few years, it can be anticipated that the states will continue to refine existing impaired driver programs and initiate new, innovative programs similar to the ones just described.

A recent informal survey of state administrative per se laws conducted by the New York State Governor's Traffic Committee found that there are 22 states with some kind of administrative license suspension/revocation program in place. The survey found that, among the 11 state respondents, administrative per se laws were neither uniform in design or practice. All 11 respondents indicated that their states' administrative per se laws have made a significant contribution to the reduction in highway crashes and fatalities, primarily because the laws strengthened and enhanced existing drunk driving programs. (A complete copy of the report from the New York State Governor's Traffic Committee is enclosed herewith).

FEDERAL ROLE

Despite the progress that has been made over the last several years, alcohol-related injuries and fatalities continue to be a major problem for the country. Fatal motor vehicle crashes in which there was alcohol involvement constituted 52 percent of all the fatal crashes in 1986, according to the FARS report. In more than half of the single vehicle accidents in 1986, the driver was legally intoxicated, and about one-third of all multi-vehicle accidents involved a legally intoxicated driver. About 40 percent of all bicycle and pedestrian accidents in 1986 involved either a legally intoxicated driver or a non-occupant victim.

Additionally, public concern over drunk driving seems to have leveled off in the last few years. In the recent tragic school bus accident in Kentucky, for example, media attention was focused almost exclusively on the safety defects of the school bus. Relatively little attention was paid to the fact that the pickup truck driver had a BAC of .24—over twice the level for legal intoxication in most states—and that he was a repeat offender. The accident is likely to result in improvements in the enforcement of school bus safety regulations but is unlikely to provide the impetus for any new or additional federal or state drunk driving initiatives.

In light of these trends, therefore, we believe that alcohol-impaired driving continues to be a national concern and that the federal government must continue to play a leading role in addressing it. Recently, NHTSA issued a final rulemaking on the effectiveness of programs funded with Section 402 funds. In that rulemaking, NHTSA indicated that drunk driving was, according to its analysis, a national problem, that the alcohol counter-measures program was a very effective program, and that state-administrated drunk driving programs should continue to be funded with 402 grant funds on a priority basis. NAGHSR strongly supported this position.

Clearly, Senator Lautenberg believes that the federal government must play a major role in combatting drunk driving, for that is the premise upon which his proposal, S. 2549 is based. We applaud his vision and leadership and that of Senator Danforth on this issue.

DRUNK DRIVING ENFORCEMENT LEGISLATIVE PROPOSAL

NAGHSR recently had a chance to assist in the development of S. 2549 and to review the proposal in its final form. On balance, we find S. 2549 to be strong both structurally and substantively. Structurally, the bill is straightforward and uncomplicated (which is a rarity these days for legislative initiatives!). Since it establishes an incentive grant program that is patterned very closely on the Section 408 Alcohol Safety Incentive Grant program (23 U.S.C. 408), it is an easy bill for state highway safety departments to comprehend.

The bill is also strong substantively. In order to be eligible for a basic alcohol enforcement grant, a state must adopt legislation allowing administrative revocation or suspension of the licenses of persons arrested for alcohol-related driving violations prior to their conviction. A recent study by the Insurance Institute of Highway Safety (IIHS) found that these so-called "administrative per se" laws were more effective than either "per se" laws (those that define operating a vehicle at or above a certain blood alcohol concentration level as a crime) or laws that mandate jail or community service for first convictions of driving under the influence. The New York State survey tends to confirm this finding, as does a recent study by the AAA Foundation for Traffic Safety which indicated that the decline in drunk driving in 14 states was no greater in states with severe penalties than in those that had not imposed such penalties. In effect, S. 2549 provides incentives to those states that chose to implement one of the most effective means of reducing alcohol-related fatal crashes.

One feature of the bill that we especially like is its reliance on incentives, rather than sanctions, to influence state government behavior. We believe that sanctioning Section 402 funds is a counterproductive approach to the drunk driving problem. 402 funds have, according to the NHTSA rulemaking on the 402 program, been very effectively used to combat the drunk driving problem in a number of ways such as: community-based alcohol prevention and education programs (such as Project Graduation and the Techniques for Effective Alcohol Management [TEAM] program); sobriety checkpoints and standardized sobriety testing; enforcement of state drunk-driving laws; DWI training for law enforcement officials, prosecutors, and judges; alcohol treatment and rehabilitation programs (with financial support from other federal and state alcohol-related programs); and data collection and analysis programs which track the arrest records of drunk drivers. Sanctions would, therefore, compel state governments to improve their drunk driving enforcement efforts at the expense of their prevention, intervention, rehabilitation and treatment, and record-keeping efforts.

The sanctioning of highway construction funds would also be counterproductive. If there were sanctions, states would have less money to make needed highway safety engineering improvements and construction improvements, which in turn, would exacerbate existing highway safety problems.

Although NAGHSR believes that S. 2549 has merit, there are four aspects of the bill that are of major concern. First, we feel that the legislation is not especially well-timed. In April, NHTSA issued a notice of proposed rulemaking on the implementation of the Section 408 Alcohol Incentive Grant program. The rulemaking would eliminate some of the unnecessary restrictions on state compliance with the 408 eligibility criteria without making any changes to the criteria themselves. Once the rule is finalized, more and more states are likely to qualify for 408 grants. We believe that it is preferable for NHTSA to first complete the regulatory process and then determine the impact the changed regulations have on state enforcement programs before any new alcohol enforcement incentive grant program is established.

Second, we are concerned about creating a new alcohol incentive enforcement when the existing program does not seem to be working that well. The 408 program was originally authorized at $125 million over a 3-year period. To date, only $24 million of that amount has been obligated, leaving a large pool of funds that is vulnerable to future budget cuts. Only 17 states have qualified for the program thus far, and no new states have qualified since November 1985. Many states support administrative per se laws in concept but have been unable to enact such laws. In some states, the constitutionality of administrative per se laws has been questioned. Other states do not have an administrative structure in place to expeditiously transmit the license information from the arresting officer to the licensing agency. Other states feel that license suspension is too severe a punishment for first-time DWI offenders, and still others are concerned about the potential for additional budgetary and staffing demands on the existing state administrative system. Other states oppose the transfer of license confiscation authority from the judiciary to the enforcement community, and others are concerned about the effectiveness of issuing a temporary license to DWI offenders (particularly repeat offenders). Perhaps, most importantly, many states cannot qualify for 408 alcohol enforcement incentive grants because of the rigid statutory criteria for eligibility. We believe that it is time to review the 408 program and determine if some statutory changes can be made to the eligibility criteria so that more states will qualify.

Third, we are concerned that the 409 eligibility criteria are so stringent that relatively few states will be able to qualify. The eligibility critieria for the 408 program are not as stringent as those for the 409 program, yet, as noted, only 17 states have qualified for the 408 funds to date. We were pleased that the Senate Environment and Public Works Committee changed the criteria for adminsitrative suspension from 15 days to 30 days. We believe, however, that even with the change, relatively few states will qualify. We are also concerned that the only state who may qualify for a 409 grant are those which are already receiving 408 grants. If the intent of the 409 program is to involve more states in the enforcement of drunk driving legislation, then clearly the 409 program will not achieve its primary objective. While it is important to structure the legislation with stringent eligibility criteria to which states can aspire, the criteria shouldn't be so stringent that few states can satisfy it now or anytime in the future. NAGHSR recommends that the Department of Transportation research the eligibility issue and make a preliminary determination of the number of states which may qualify for the 409 grants. If the research indicates that relatively few states qualify, then some relaxation of the eligibility criteria may be in order. Further, we strongly recommend that the Committee consider the

option of combining the 408 and 409 programs into a single program with more flexible eligibility criteria.

Fourth, we have major concerns about the way the new 409 program is funded. If the program is founded out of the Highway Trust Fund, then it may divert available Trust Fund funds away from other highway safety programs such as the 402 and 403 (research and demonstration) programs. Funding for these programs has been relatively constant over the last few years and has not kept pace with increased highway safety needs. NAGHSR believes that funding for the existing highway safety programs should be increased—and not reduced—and, therefore, would be strongly opposed to this funding option. Furthermore, we question why Trust Funds should be diverted to a new alcohol enforcement grant program when there is a similar program (the 408 program) with large unobligated balances already in place. The unobligated 408 funds are obvious targets for Administration and Congressional budget cutters. It makes little sense to us to create a second program—in effect, a second target—in which large amounts of unobligated funds are likely to accrue.

Alternatively, a Highway Trust Fund-funded 409 program could divert revenue away from the federal-aid highway program whose funds are used for highway construction and rehabilitation purposes. The Governors, the state highway departments, and the highway construction industry would very likely be strongly opposed to this funding option, especially since recently released studies have found that the Nation's infrastructure is severely underfunded. The Senate Environment and Public Works Committee is keenly aware of the Nation's infrastructure problems and the massive infusion of funds (including Highway Trust Fund funds) that is needed to correct those problems.

The 409 program could be funded from general funds, but this option is fairly unlikely in light of the budgetary limitations of the FY '89 budget summit agreement and the Gramm-Rudman-Hollings legislation. Under the terms of those agreements, a new initiative can be funded with general funds only if it is a declared national emergency and a waiver is obtained from budget ceilings or if there are offsetting budgetary reductions from programs within a related budget function. It would be extremely difficult to take offsetting budgetary reductions out of programs in function 400 (the federal budget of the Department of Transportation) since the funding for most of those programs has been steadily reduced over the last several years. This program is compounded by the fact that there are legitimate unfunded highway, transit, aviation, rail, and water transportation needs and every program in function 400 has a vocal and organized constituency. Further, Congress rarely and reluctantly grants budgetary waivers and only does so for programs of utmost national priority and importance.

We can offer no easy solutions to this politically intractable funding problem. Rather, we urge you to explore each of these funding alternatives with interested and affected organizations (such as NAGHSR) and identify and move forward with the least objectionable one.

NAGHSR appreciates the opportunity to submit its views to the Consumer Subcommittee of the Senate Commerce, Science and Transportation Committee and hopes its ideas and suggestions will be of use to the Committee in its deliberations.

Senator GORE. Thank you very much, Mr. Hanna. I enjoyed your statement and we will save questions until Colonel Ford has finished his statement. Colonel Ford, please proceed.

STATEMENT OF COL. JOHN FORD, MISSOURI HIGHWAY PATROL

COLONEL FORD. Thank you, Mr. Chairman. I want to thank you and Senator Danforth for inviting me here today.

I hope that I have something that might be of interest to you. Just one comment as I lead into this. These studies that I have seen indicate that nationally 55 percent of the drivers that are involved in fatal highway crashes are drinking or are drunk.

In Missouri our stats show about 29.3 percent of the drivers that are involved in fatal crashes are actually drinking or drunk. The point being we either have a poor reporting system or we are doing better than the rest of the nation.

But we are one of the states that already have the administrative revocation law on the books, and this is basically what I want to bring to your attention today. How it works and what our overall experience has been with this particular type of law.

I realize that this particular bill encourages states to pass that type of law. We already have it, and I am just here today to encourage all of the states that do not have it to get in the business and to get this law passed.

And if this bill does encourage them, then I am in favor of this bill. I understand there are some questions about the funding of it and whether it is going to be applicable to states that already have the law and that type of situation.

And I do not know, and I do not know that it makes any difference to Missouri. We would be glad to get the money, but we have already got the law and we are going to go ahead with it.

This particular posterboard that I have brought here before you today gives you some idea of what we are doing in Missouri.

Now, these statistics run from July 1 of 1987 to June 30th of 1989, which is our fiscal year and not necessarily our calendar year. But I just wanted to give you the latest 12-month period.

As you can see in the upper left-hand corner there, we have actually had over 17,000 of these cases that we have revoked licenses, or suspended them right on the spot as they were arrested for DWI in the past 12 months. Of those, 51 percent did not request a hearing.

Now, we have the 15-day rule in Missouri, and if they do not appeal within 15 days they lose the license. The first time for 30 days and then it is an enhanced thing for any future offenses.

Of the 49 percent that chose to appeal it in court, another 33 percent lost their license. So our overall result is that 84 percent of the drivers that we arrest for DWI actually lose their licenses on the administrative side, as well having to go through the courts and to face that particular penalty as a result of actions.

All that posterboard does is just show you the different procedures that they have to go through in order to go to the courts. And so we are taking them through the courts on both sides at the same time.

In Missouri we do have several different things that we are doing to enhance our DWI enforcement. We are holding DWI spot checks. We are holding safety programs around the state that so far in the first six months of 1987 we have tried to educate through that a total of 20,000 people that have seen fit to come to our programs.

We have trained our officers in other methods of DWI enforcement and detection. There is some indication that we are making a little bit of headway.

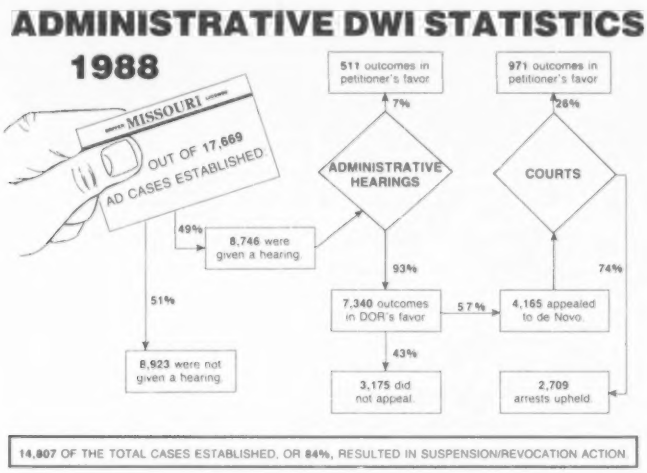
In 1986 we looked at 100 traffic crashes in the state, and of every 100 that we looked at 7.9 percent of the drivers were involved, drinking drivers, I am talking about all crashes, minor ones, major ones, fatals.

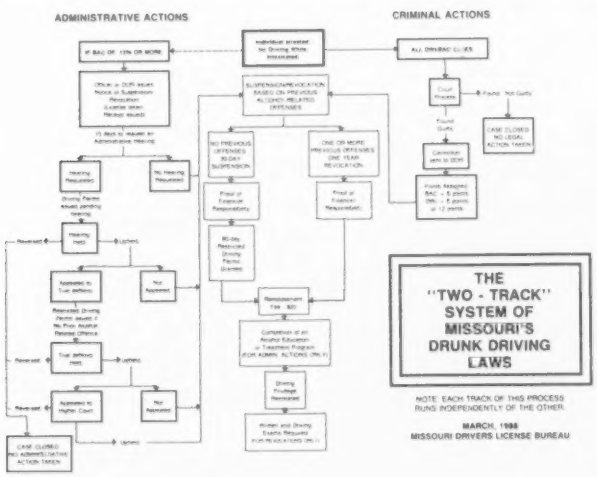
In the fatal accidents, of every 100 fatal accidents, we had 26.3 of the drivers that actually had been drinking or were drunk.

If you look at it in 1987 and in that percentage, that 7.9 percent of all accidents was 1986. In 1987 our percentages dropped down on all accidents to 7.2 and in the fatal accidents to 25.2. So we are making a little bit of progress, or we feel like we are in Missouri.

I do not have a lot of other comments. You have a copy of my testimony there and I would be glad to answer any questions you might have.

[The chart follows:]




ADMINISTRATIVE ACTIONS
CRIMINAL ACTIONS
THE "TWO - TRACK" SYSTEM OF MISSOURI'S DRUNK DRIVING LAWS
NOTE: EACH TRACK OF THIS PROCESS RUNS INDEPENDENTLY OF THE OTHER.
MARCH, 1988
MISSOURI DRIVERS LICENSE BUREAU

Senator GORE. Thank you very much, and thank you for this chart here, which is reproduced in your testimony, and it gives a good clear indication of how your system works.

Does Missouri law permit confiscation on the spot of the driver's license?

COLONEL FORD. Yes. We have a BAC law that indicates anything of .10 or over is prima facie evidence of DWI. The old DWI law that we had was .15 percent, and of course we reduced it a few years back.

The administrative revocation law is a compromise of those two readings, and so actually we revoke on the spot or suspend on the spot those drivers that test .13 percent or more.

It is hard to keep all these stats in your mind, but that is where we are at with the revocation.

Senator GORE. How do people react when a law enforcement officer tells them they are taking their license away?

COLONEL FORD. Well, nobody wants to give up their license. But what we do is issue them a 15-day temporary permit.

We take their license, send it on into the Department of Revenue, and then if they do not appeal within 15 days the Department of Revenue already has their license in their hand and they revoke it at that point.

Senator GORE. So they can continue driving during the 15 days?

COLONEL FORD. For 15 days, right.

Senator GORE. But if they do not show up within 15 days——

COLONEL FORD. If they do not file an appeal with the Department of Revenue with 15 days, then they go ahead and take the appropriate action to suspend or revoke their license, as the need may be.

Senator GORE. In my state of Tennessee we have about 30,000 arrests each year for driving while intoxicated. How does this compare with your experience in Missouri?

COLONEL FORD. We peaked in 1984 with a little over 41,000 statewide. For 1987, I think we had 36,500, in that neighborhood. So we are running around 36,000 to 40,000, depending upon the year.

Senator GORE. Have you noticed any increase in the number of arrests since you enacted the administrative suspension provision? Your last answer would indicate it had been——

COLONEL FORD. Well, we put this law in in 1983, so actually our arrests are going down just a little bit.

What we are seeing is an increase in the number of arrests for driving without a license, driving while their license is suspended, driving while their license is revoked, which in effect if these people were suspended or revoked for a DWI conviction or an administrative revocation then we feel like we were also accomplishing the fact again by taking those drivers off the road a second time.

Senator GORE. Mr. Hanna, you have testified that although these administrative suspension laws are generally believed to be very effective in reducing highway accidents, less than half the states now have them.

I would like a little more information on that. Are these measures controversial within the states? And if so, why?

Mr. HANNA. Extremely so in some of the states. In some states there is a reluctance to give the police officer the authority to suspend a license on the spot.

In some cases there is a feeling that the revocation of suspension should not occur, unless it is by the courts. Some even question the authority of DMV to suspend licenses.

So you have a combination of factors of one's reservation and reluctance to give up the old ways of doing things for a new procedure which may or may not work.

Now, in due time these factors will be overcome, just like the reluctance was on the 21 drinking age, just like the reluctance towardmandatory use of safety belts. But it is not going to occur overnight in some jurisdictions, in some of our states. And the states are having a tough time getting those administrative suspension laws through.

And sometime, a Federal mandate is received is more highly resented than any other single factor concerning a law. And in some states the governor's representative, for example, may not even mention that a requirement is a Federal law for fear of raising the red flag.

Senator GORE. You testified that even if the maximum period for completing a suspension was increased to 30 days, a lot of states would have difficulty meeting that timetable.

Why do the states need so much time and how much time do you think is necessary?

Mr. HANNA. I am not prepared to give you a specific time at this time, and I did not say exactly 30 days. Thirty days would improve the statute.

Many other states do have the administrative procedures and techniques which allow for 15 day suspension. But many of them do not. They are not fully computerized, they are not fully staffed, they have tremendous backlog and volume of work. They would be unable to move to a 15-day suspension without extensive cost. So for that reason some felt that the criteria was excessive.

Our organization would be glad to give to the Committee, upon your request, a suggested exact period, if you would wish. Thirty days would be an improvement.

Senator GORE. Yes. We would like to get your comments on that, and we may have some additional questions in writing for both of you as we may for the other witnesses too.

I would like to conclude today's hearing by once again expressing my thanks to these two witnesses, COLONEL Ford and Mr. Hanna, and to all of the witnesses who have appeared here today and pledge to those interested in the problem that we are going to do our very best to get this legislation passed.

And with the thanks of the subcommittee to our guest as well as our witnesses, we will have the hearing stand adjourned at this time.

[Whereupon, at 4:00 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE AMERICAN INSURANCE ASSOCIATION

As a property-casualty insurance trade association whose 188 members write approximately $12.5 billion in private passenger and commercial automobile insurance premiums annually or about ?6.73% of all the automobile insurance in the United States, the American Insurance Association (AIA) has a strong humanitarian as well as significant economic interest in reducing traffic accidents. Reduction of these accidents not only means less human suffering, but it is important to controlling the costs underlying the automobile insurance system. Safer driving habits, in addition to safer roadways and vehicles, mean reduced losses, which in turn are reflected in insurance rates.

As active participants in the anti-drunk driving movement over the past years, our association was heartened to hear from the National Highway Traffic Safety Administration that in 1986 the proportion of drivers involved in fatal crashes who were legally intoxicated had dropped by 14 percent from the 1982 level. In addition, involvement by teenage drivers in alcohol-related accidents declined 26 percent during this same period. This was most welcome news, and it is a credit to the hard work and dedication of many people in all segments of our society.

The AIA believes, however, that we cannot allow ourselves to become complacent with these successes because more recent statistics indicate that progress is slowing or leveling off. Our members fear that any relaxation of effort will indicate to the American public either that the problem has been solved or that the effort was just a passing phase. In addition, the importance of this issue has been elevated even further with the increase of the national maximum speed limit to 65 mph on most rural interstates. A major finding of a recent U.S. Department of Transportation report to Congress has found that based on analysis of fatality data since ?975, deaths on rural interstates "increased 20 percent in the months following implementation of the 65 mph speed limit in the first 28 states that raised their speed limit compared to what would have been expected . . . ." Since a repeal of the higher limit is not politically feasible at this time, all highway safety initiatives have become that much more critical.

For all of the above reasons, the American Insurance Association strongly supports S. 2549, the Drunk Driving Prevention Act of 1988. Although we believe that a successful anti-drunk driving campaign should be community-based, we feel that it should receive strong public and political support at all levels—local, state, and national. We believe that enactment of this legislation will provide this needed support through financial rewards to states that adopt and implement drunk driving countermeasures such as administrative license suspension or revocation laws and self-sustaining drunk driving enforcement programs. This approach, which was used in NHTSA's 408 program, is a sensible, positive way to get proven deterrents enacted.

In 1986, private passenger automobile insurance liability losses and related expenses increased 17% over 1985 and another 14% through the third quarter of ?987. Insurers paid out $33,351,000,000 in private passenger automobile liability losses for the twelve months ending in September 1987. These figures show the tremendous economic effect that automobile accidents have on our society and underscore the need for the continued improvement of safety on our nation's highways. Further, the cost of each automobile accident will continue to increase because underlying costs relating to health care, settlement of disputes and auto repairs are climbing. To counterbalance these effects, we must all work to significantly reduce highway deaths and injuries. A goal of reducing highway accidents is sound public, economic and insurance policy.

Although the country has come a long way in the fight against the drunk driver, it is evident that much remains to be done to re-shape public attitudes regarding the difference between social drinking and driving and impaired driving. We realize that it will take time, and the problem may never be completely cured. Obviously, the task before us is not an easy one; yet, the American Insurance Association and its members are committed to this undertaking and will continue to work hard in the effort to reduce the horrible tragedies on our nation's highways. We commend Chairman Gore and the members of the Subcommittee for addressing this important issue, and we hope the entire Congress will continue its support through the enactment of the Drunk Driving Prevention Act of 1988 or similar legislation.

THE PROBLEM

National studies indicate drunk drivers are involved in over 55% of all fatal highway crashes. However, in Missouri a study of the STARS system showed the investigating officer indicated drinking involvement in only 29.3% of the drivers. Hence the problem is greatly under reported.

The Missouri Fatal Accident Reporting System (FARS) in 1987 indicated that of the 1,397 drivers involved in fatal crashes, 277 were reported as not drinking, 244 reported as drinking and for 873 drivers the information was not reported. In only 3 crashes was drinking involvement reported as unknown. Hence further proof of the problem being under reported in Missouri.

Further study of the Missouri Crime Summary indicated that in 1984, 41,259 persons were arrested for driving-while-intoxicated. The total number of arrests dropped to 36,497 in 1987. Of the arrests in 1987, 13,853 were convicted, however, 4,594 which are included in the convictions, received a suspended imposition of sentence. The others are pending or were found not guilty.

A study of arrest records indicates that in the first six months of 1988 members of the Missouri State Highway Patrol have arrested 452 drivers for driving while under suspension or revocation - 308 of these cases are pending, 8 persons received a suspended imposition of sentence, 13 cases were dismissed, and 3 were not prosecuted. (Note—this system does not indicate what the revocation or suspension was for.)

WHAT IS BEING DONE

As a result of 28 DWI spot checks conducted by members of the Missouri State Highway Patrol in the first six months of 1988, 91 persons have been arrested for DWI. 308 officers spent 87? hours conducting these checks. An interesting note to these checks indicates that 48 people were found driving while under suspension or revocation, and 46 were found to have no driver's license at all. The use of sobriety checkpoints, coupled with appropriate media coverage utilized by enforcement agencies, seems to deter (and detect) drunk driving.

The Missouri Division of Highway Safety reported a total of 175 sobriety checkpoints in Missouri in 1986, all of which were conducted between the hours of 10:00 p.m., and 3:00 a.m. 423 persons were arrested for DWI as a result of these checks.

The Missouri State Highway Patrol, as well as most police agencies in Missouri, has conducted training of its officers in detection of drunk drivers.

Missouri State Highway Patrol safety officers have conducted 1,189 safety programs during the first 6 months of 1988. Alcohol was the subject in 317 of these programs. The safety officers reported about 20,000 people were in attendance at these programs.

LEGISLATION

1. Driving-while intoxicated. Including alcohol or drugs.
2. BAC .10% alcohol or more
3. Administrative suspension.

There is some indication that as a result of better enforcement, education, legislation and media attention the problem of driving-while-intoxicated in this State is being reduced.

[News Tribune, Jeffersom City, MO]

MAN SENTENCED IN MANSLAUGHTER CASE

A Holts Summit man was sentenced Friday to 5 years in prison on two counts of involuntary manslaughter for the April 1987 traffic deaths of a St. Thomas man and his granddaughter.

Judge James McHenry gave Curtis W. Verslues, 27, two 5-year prison terms to be served concurrently. At a hearing in Cole County Circuit Court, McHenry said an "unfavorable" pre-sentence investigation report recommended against probation.

Verslues pleaded guilty to the felony charges in December, and last month he formally requested probation.

Verslues faced up to 14 years in prison and $10,000 in fines for the vehicular deaths of Edward Strope, 83 and Veronica Herigon, 8, both of St. Thomas. They died from injuries suffered in a head-on crash between two pickup trucks April 26, 1987, on Route B just south of Ellis Boulevard.

Authorities said Verslues, returning home from a fishing trip, was driving north on Route B when his truck crossed the center line into the path of a truck driven by Marilyn Herigon, daughter and mother of the victims.

Verslues allegedly was driving drunk. Court records show his blood alcohol level was tested at 0.12 percent; legal intoxication in Missouri is 0.10 percent.

After Friday's hearing a teary-eyed Mrs. Herigon said: "As far as I'm concerned, the verdict was just." She added that the sentences were stiffer than she thought they would be.

"He created my living hell for me." Mrs. Herigon said of Verslues.

On May 23, Mrs. Herigon; her husband, Dale Herigon; and her sister, Majorie Goeller, settled a wrongful death lawsuit they filed earlier that month against Verslues and received a total of $127,000—which is the sum they had sought.

Judge Bryon Kinder ordered Verslues to pay $87,000 to the Herigons as compensation for the death of their daughter, and $20,000 to each woman for the death of their father.

Of the $127,000 awarded, fees paid to the plaintiffs' two attorneys,—Milt Harper and Steve Bratten—will amount to $40,667, court records show.

STATEMENT OF JOHN BASAMAN

Mr. Chairman. Senators: I wish to have included in your record this statement in the hope that only one infant will be saved. You and I will never know the name of that child because there are no newspaper accounts when crimes are prevented, only when they occur. But this bill will save lives and the children saved will have more than the six weeks of life given to my son. I pray that my testimony can just sway one more vote for this bill so that no other father will climb out of a car window to see his family destroyed.

The attached newspaper accounts of the specifics of the murder of my infant son, Drew, and my wife, Lauren, and the severe injuries sustained by my son, Jonathan, now two, include the details of the assault. But they cannot detail the intensity of the horror of the night of May 3, 1988 and the devastation caused by this crime. Before the doctors could tell me Johanthan would live and before I could make arrangements for the remains of my wife and baby. Their killer was released and returned to the streets with the right to drive. He was taken from his car and although his blood alcohol level was measured at .17. He was free to drive the streets without any restriction or supervision. New Jersey has a procedure for the administrative suspension of a license, but over a month passed before his license was revoked. In order to attend the memorial service for my wife and son. I was forced to drive past the site of the murders and knew he was at liberty to operate a car at that time.

Unfortunately, I truly believe that this legislation would not have saved my wife and sons. I am convinced that the killer of my loved ones belongs to that group of individuals who will ignore any laws or sanctions designed to enforce responsible actions. Educational campaigns will not reach them and revocation of their license does not ensure they will not get behind the wheel without a license. Just as a death penalty or life imprisonment will not stop all crime. The removal of the privilege to drive will not stop a select number of individuals from drinking and driving. But the greater majority of driver will restrain their drinking activity because of this law and that added restraint will save lives.

What can be the reasons for not passing this law? I'm sure that well-paid representatives of industries based on the consumption of alcohol will detail the loss of revenues experienced by their clients because people will restrain their drinking, and their testimony is evidence of the effectiveness and success of this type of legislation. That decrease in revenue is the proof that we can be moved to more responsible action by enactment of such bills. We would be a much greater society if we could reduce their revenues without these measures. That we could recognize the danger of driving when consuming alcohol without the need for such laws.

There will be statements that such measures take away the protection of due process from individuals apprehended driving while impaired. Actually, we strengthen due process for the innocent potential victims of alcohol related crimes and they greatly out number the persons who will be inconvenienced by the measures of this bill. The abuse of alcohol when driving involves the truly innocent, and when an impaired driver murders a child. He acts as accuser, jury, judge and executioner without any concern for the rights of his victim.

If someone is able to establish the inappropriateness of a suspension. We will much more easily be able to repair the consequences of that mistake than we are able to remedy the consequences of the injuries and deaths occuring on our streets. We can easily provide a timely review of such suspensions to reduce the possibility of errors. The arguments that breath tests are not absolutely perfect and are not administered to every single driver on the road will act in direct contradiction to laws they understand but chose to disobey and then attempt to avoid the consequences of their action.

If we cannot limit our use of mind altering substances when driving because it is right, then it is your duty to enact legislation that will at least prevent someone who has demonstrated disregard for the safety of others from immediately returning to their weapons. This bill, when added to an increasing body of measures to restrain substance abuse while driving will help to eliminate the attitude that death by indifference is more tolerable than death by intent. That death by auto is less severe than death by gun.

No child in this country is in immediate danger from Iranian gunboats or attack by foreign powers. But every child in this country is in a very real threat of being killed by an impaired driver. Communities throughout the country are posting "Drug-Free School Zone" notices on the same streets that deadly missiles are operated by impaired drivers. Before this measure can become law, the names of added babies killed will be known.

It is evident that consistent enforcement of stringent laws against drunk driving have decreased the number of alcohol related deaths. Although we cannot determine the exact number of lives that are saved each year or the identity of each child not involved in a fatal accident. They are being spared, and if you can picture in your mind one specific child among your families, neighbors, from your constituents. See that child in your mind as you deliberate this bill and let that child represent the one child that will be saved each year. You will not be able to reject this bill, when you cast your vote, name the child that will represent those saved by your ballot. Is a sad commentary on our national values that people only refuse a drink because they may be stopped by the police and face stiff penalties if they fail a sobriety test. Very few decline a drink and state "no more for me, I'll be driving among my friends and neighbors."

I would like to thank you for your patience and consideration of my statement and pray you will give merit to what I have asked. I never had the chance to kiss my baby that night, but because you have accepted my statement, my son Drew Evan Basaman, born March 22, 1988, died May 3, 1988 will be a part of the history of this country. Although he was only with us six weeks, he left the gift of sight to two people. He inspired love and kindness in many and if you can be moved to strengthen the fight against these senseless killings because of his and his mother's death. He will have served his country. This is as much a hero as any before him and all that I can give him now.

Report of the National Association of Criminal Defense Lawyers on S. 2367: Drunk Driving Prevention Act of 1988

I. INTRODUCTION: NACDL SUPPORTS A FAIR DDPA

The National Association of Criminal Defense Lawyers (NACDL) supports effective, realistic, and constitutional legislation aimed at the drunk driving problem in our country.

Toward this goal, we have reviewed S. 2367, the proposed Drunk Driving Prevention Act of 1988 (DDPA), and have attempted to identify administrative and constitutional problems in it, and to propose modifications where appropriate.

II. IDENTIFICATION OF ADMINISTRATIVE AND UNCONSTITUTIONAL PROBLEMS AND REMEDIAL SUGGESTIONS

At present DDPA's (e)(1)(A) provides in pertinent part:

"When a law enforcement officer has probable cause . . . to believe an individual has committed an alcohol-related . . . offense, and such individual is *determined on the basis of one or more chemical tests,* to have been under the influence of alcohol while operating the motor vehicle concerned *or refuses* to submit to such test as proposed by the officer, such officer shall serve such individual with a notice of suspension or revocation, . . . and *shall take possession of the driver's license* of such individual." (Emphasis added.)

(1) Identified Problem: DDPA's lack of time specificity for chemical testing equates to insufficient evidence as a matter of law and a denial of due process for either convicting the person of drunk driving and/or taking the person's license.

The proposed language of the DDPA fails to specify the exact time that a chemical test is to be given. This is a critical failing because such a test is used to determine if the suspect was under the influence at the time of motor vehicle operation. Most of the present chemical testing by our law enforcement agencies occurs on a one test basis performed sometime after driving. In this regard, all scientific authorities agree that it is impossible to determine a person's urine, breath or blood alcohol concentration on the basis of a single chemical test given after the time of driving absent some other information demonstrating that the person was metabolically eliminating alcohol rather than absorbing alcohol. E.g., Mason and Dubowski, "Breath-Alcohol Analysis: Uses, Methods, and Some Forensic Problems," 21 Forensic Sci. 9 (1976).

This inability to know if the suspect was absorbing or eliminating alcohol at the time of driving presents the constitutional question of whether one post-driving chemical test is, in and of itself, sufficient evidence to uphold either a drunk driving conviction or a suspension/revocation of a driver's license? The case law suggests that it is not, because one post-driving chemical test is insufficient under both the proof beyond a reasonable doubt standard, *Jackson* v. *Virginia,* 443 U.S. 307 (1979) and the civil preponderance of the evidence standard. E.g., *State* v. *McCafferty,* 748 S.W.2d 489, 491 (Tex.App., Houston [1st] 1988).

Moreover, it is NACDL's view that the case with which a fact finder can be mislead or confused by a single post-driving test result offends due process. Biologically, any single post-driving test result has three possible correlations to the suspect's alcohol concentration at the time of driving: (1) later test result is higher than alcohol concentration at time of driving; (2) later test result is same as alcohol concentration at time of driving; and (3) later test result is lower than alcohol concentration at time of driving. Accordingly, a single test result, taken twenty minutes or more after the time of driving could erroneously result in the wrongful drunk driving conviction and suspension of a driver's license where, in reality, the person was not actually intoxicated at the time of driving. See, Fed.R.Ev. 403 (evidence is not relevant if it has a tendency to confuse or mislead the fact finder). See also, Appendix A: (diagram of three possible correlations). This due process question of elimination versus absorption is almost nonexistent if testing is done almost immediately (within 5 minutes) after driving at the scene of the traffic stop.

NACDL remedial suggestion

Either require multiple chemical tests 20 minutes apart or require the test be performed on the scene of the traffic stop within 5 minutes after the stop.

NACDL comment on "Multiple Testing"

Assuming the accuracy and reliability of the particular chemical test utilized and that the individual being tested is of average metabolism, experts generally agree that a person's alcohol concentration at the time of driving can be accurately and reliably determined by three chemical tests performed subsequent to the time of driving, by extrapolation back of their results. Utilization of three tests, taken 15 to 20 minutes apart, is probably sufficient to determine whether the suspect's metabolism was in absorption or elimination.

NACDL comment on "On the Scene Testing"

An "on-the-scene" chemical test requirement would eliminate the need for multiple testing and extrapolation calculations. An immediate test at the scene more ac-

curately gauges the intoxication result in close proximity with the act of driving, the illegal act. Such testing methods are currently available and regularly utilized today in law enforcement.

(2) Identified Problem: No Requirement for Chemical Test Specimen Preservation.

The proposed language of the DDPA fails to require law enforcement agencies to capture and preserve alcohol test specimens taken from citizens who are suspected intoxicated drivers for test result verification.

Remedial suggestion

Require chemical test specimen be preserved for verification.

NACDL comment on "Chemical Test Preservation"

At present, law enforcement utilizes three means of chemical testing for drunk driving: breath, blood and urine. Of necessity, for testing of blood and urine, specimens must be captured and preserved (at least until testing). Breath specimens, however, although capable of being inexpensively and conveniently captured and preserved, are not. Wilkinson, et al., "The Trapping, Storing, and Subsequent Analysis of Ethanol in In-Vitro Samples Previously Analyzed by a Nondestructive Technique," 26 J.Forensic Sci. 671 (1981) and Dubowski and Essary, "Alcohol Analysis of Stored Whole-Breath Samples by Automated Gas Chromatography," 6 J.Analytical Tox. 217 (1982).

In this regard, NACDL notes that most states have statutory provisions for a second independent chemical test by the accused after he/she has consented, and thereafter taken, the prosecution's test. E.g., Article 67011-5, sec. 3(d), Tex.Rev.Civ.St.Ann. However, these statutory rights often fail to provide remedies for their violation, *State* v. *Crawford*, 643 S.W.2d 178 (Tex.App. 1982) and most citizens are both unaware of the quickly dissipating right and ill equipped to arrange for the taking of a private specimen.

Moreover, it is important to note that a separate second independent test is not "a retesting" of the same specimen that forms the basis of the prosecution. Therefore, having a second independent and separate test result will not reduce litigation, but rather, may tend to increase it, and may actually permit the guilty to win dismissal of the prosecution. See generally, *State* v. *Peterson*, 739 P.2d 958 (Mon. 1987); *Moczek* v. *Bechtold*, 363 S.E.2d 238 (W.Va. 1987); *Montano* v. *Superior Ct. Pima Cty.*, 719 P.2d 271 (Calif., 1986); and, *People* v. *Craun*, 406 N.W.2d 884 (Mich.Ct.App. 1987).

Requiring the testing officer to capture and preserve alcohol concentration specimens would mean that a test result could be verified if either it or the accuracy or reliability of the testing process were called into question. Verification ability would reduce litigation and case court docket overcrowding. Indeed, the original prosecution test results could be reverified by either the prosecution or the defense and their respective findings would go far to resolve and/or eliminate contested issues of intoxication. Verification of an original prosecution test result also would increase the probability that the doubting party would quickly settle the case by agreement.

Law enforcement's current failure to preserve breath specimens is destruction of the evidence, resulting in an unconstitutional denial of due process, and the rights to confrontation, to gather exculpatory evidence and to a fair trial viewed by many as tantamount to a willful destruction of the evidence. See, *Peterson, Moczek, Montano* and *Craun*. See also, *People* v. *Underwood*, 396 N.W.2d 443 (Mich.App. 1986). This concern seems especially compelling in light of the fact that all states currently have at least a .10 percent BAC per se intoxication statute.

NACDL is aware of the Supreme Court decision of *California* v. *Trombetta*, 467 U.S. 479 (1984), wherein it was held that due process was not offended by the manner and methods of operation of the California breath test program wherein breath specimens were not preserved. However, we note that most other state breath test programs do not provide the same guarantees and safeguards that California did. For example, California and Texas may be compared and contrasted as follows:

California Alcohol Testing Program at time of Trombetta

1. did not preserve *same* breath as tested by Intoxilyzer;
2. breath samples were preserved by Field Crimper-Indium Tube Encapsulation Kit;
3. two samples were taken from each defendant and a test performed on each sample—test results of the samples had to be within .02% of each other to be admissible;
4. Intoxilyzer calibrated weekly;
5. defendant allowed access to Intoxilyzer for inspection;

6. defendant allowed access to Intoxilyzer calibration results and breath samples used in the calibrations;
7. California prosecutions were based on "presumption" statute rather than "per se" statute; and,
8. defendant complained that destruction of breath sample thwarted his ability to impeach Intoxilyzer result and did not argue that destruction prevented him from presenting direct evidence of his innocence.

Texas alcohol breath testing today

1. Intoxilyzer 4011-ASA is capable of preserving the exact same breath sample tested by the instrument;
2. only one breath sample of a defendant is taken;
3. intoxilyzer not required by statute or regulation to be calibrated on periodic basis;
4. the defendant, as per Texas regulation, is denied access to the Intoxilyzer to test its accuracy;
5. reference sample solutions are not preserved for defense inspection;
6. as per regulation, access to Intoxilyzer information or citizen training is precluded unless the individual is going to work for the State;
7. Texas DWI prosecutions are based on a "per se" statute and not a presumption statute; and,
8. it is the manufacturer's policy in Texas to not make any Intoxilyzer 4011-ASA sales or provide information to anyone in Texas except those connected with law enforcement;

Accordingly, NACDL believes that as a means to ensure a uniform due process to citizens of all states, and, in an effort to build public respect for the various states' chemical test programs, and, to build a strong confidence in the fairness of our judicial system, Congress should require chemical test specimen's be captured and preserved.

(3) Identified Problem: Chemical test refusals based on confusion caused by law enforcement officers advising suspects of their rights to remain silent, have counsel present, and to terminate the interview under *Miranda* v. *Arizona* and similar state grounded authorities, in close proximity to the test request, violates due process.

Remedial suggestion

In jurisdictions "where applicable," [1] require law enforcement officers who request citizen suspects to take a chemical test to affirmatively inform the person that his/her *Miranda*/state grounded rights are not applicable to a decision to submit, or not submit, to chemical testing.

NACDL comment and affirmative law enforcement warnings

Since the landmark decision by the United States Supreme Court in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), law enforcement officers have had to inform said citizen/suspects that: (1) anything said can be used against them; (2) they have a right to have counsel present; (3) if they can't afford counsel, that one will be appointed for them by the court; and (4) they can terminate the law enforcement interview at any time. These fair warnings must be given if the government is to use self-incriminating remarks of the citizen/suspect after he is in custody. Following *Miranda*, many state legislatures passed law requiring similar warnings be given persons arrested in their jurisdictions, e.g., Article 38.22, Tex.C.Cr.Pro. See generally, *South Dakota* v. *Neville*, 459 U.S. 553 (chemical test result is not testimonial in nature and therefore is not protected by the privilege against compulsory self-incrimination).

However, it is well settled that the warnings are not applicable to the decision to submit to chemical testing.

Since drunk driving in a majority of our states is a criminal offense, law enforcement officers who have stopped and arrested a person for driving while intoxicated, routinely inform those suspects of their *Miranda*/state grounded rights.

Such warnings generally precede the officer's request that the citizen/suspect submit to chemical testing.

However, in most cases, the officer does not inform the person that the *Miranda*/state grounded rights are not applicable to the decision to submit to chemical test-

---

[1] Some states do allow suspected drunk drivers to have advice of counsel before submitting to a chemical test request. *See, Brosan* v. *Cochran*, 516 A.2d 970 (Md. 1986); *Kuntz* v. *State Hwy. Comm.*, 405 N.W.2d 285 (N.D. 1987) and *State* v. *Spencer*, 750 P.2d 147 (Or. 1988). In jurisdictions such as these, NACDL remedial suggestion for identified problem 3 would be illegal and therefore not applicable.

ing. As a result, suspects are often confused into believing that the rights do apply, and that it is an appropriate exercise of those rights to decline to submit to chemical testing. See, "The High Court vs. the High Driver: A Short Course in Logic," Vol. XXI, CrL.Bull. 37 (Jan.-Feb. 1985).

Numerous courts have held that this confusion, or inadvertent or negligent misleading, rises to the level of a due process violation. The body of law stemming from these cases is sometimes called the "Confusion Doctrine/CoMingled Miranda Doctrine/Mixed Miranda Breath Test Request Doctrine." See, *State* v. *McCambridge*, 712 S.W.2d 499, 506, n.17 (Tex.Cr.App. 1986); *Rust* v. *California Cept. of Motor Vehicles*, 73 Cal.Rptr. 366 (Cal.Ct.App. 4th Dis., Div. 1, 1969); *Wiseman* v. *Sullivan*, 211 N.W.2d 906 (Neb. 1974); *Swan* v. *Louisiana Dept. of Pub. Safety*, 311 So.2d 498 (La.Ct.App. 4th Cir. 1975); *State* v. *Severino*, 537 P.2d 1187 (Ha. 1975); and, *Lawton* v. *Ohio Bureau of Motor Vehicles*, 386 N.E.2d 267 (Ohio Ct.App. 1978).

(4) Identified Problem: Immediate taking possession of the person's driver's license upon refusal or upon a test result indicating drunk driving violates due process.

NACDL Remedial Suggestion: Do not require the immediate taking of a person's driver's license upon refusal or on a chemical test determination that a drunk driving offense has been committed. Rather, provide for the installment of the option to an electronic alcohol ignition interlock device in the suspect's vehicle pending appropriate due process proceedings for license suspension or revocation.

Such a device, which precludes vehicle ignition where alcohol is sensed on the driver's breath, is specifically coded to the suspect's breath and therefore cannot be fooled by the clean breath of another.

NACDL Comment on Immediate Taking of License Generally: Due process protection is applicable to the deprivation of a person's driver's license by a state. *Dixon* v. *Love*, 431 U.S. 105 (1977) and *Mackey* v. *Montrym*, 443 U.S. 1 (1979). See also, *Mathews* v. *Eldridge*, 424 U.S. 319 (1976). Clearly, a citizen/suspect has a property interest in the retention of his/her driver's license.

NACDL comment on refusal taking

The immediate taking of a person's license for a refusal to be chemically tested because he relied on his rights, absent affirmative warnings that *Miranda*/state grounded rights were not applicable constitutes an illegal taking and runs contrary to due process. See, supra, NACDL Comment on Affirmative Law Enforcement Warnings. Further, such a taking in states that do afford applicability of similar rights would be patently offensive to state law. See, footnote 1, supra.

NACDL comment on chemical test determination taking

The immediate taking of a person's license for having a particular level of alcohol concentration also runs contrary to due process.

As discussed earlier, a single post-driving chemical test is an inaccurate and unreliable means of determining what a person's alcohol concentration is at the time of actual driving. See Smith, "Science, The Intoxilyzer, and Texas Breath Alcohol Testing" Vol. II, Texas drunk driving law, VII-37 (1987).

Moreover, with specific focus on breath and urine testing, the authorities generally agree that these type tests are premised upon the "exactly average" biological person. Here, there is unanimous agreement again that all persons are not "exactly average" in their biological persons and that breath and urine tests can, and will, over report (i.e., indicate an erroneous high result) a particular person's actual blood alcohol concentration. This over reporting can, and does, result in the prosecution and conviction of innocent persons.

In conclusion, NACDL believes that absent a requirement for an "on location of the traffic stop test," a driver's license should not be taken where a suspect registered a chemical test result indicating drunk driving from a single non-blood test taken after the time of driving.

NACDL Comment on Electronic Alcohol Ignition Interlock Installation Option

It is an unfortunate reality that the taking of a suspect's driver's license through a suspension or revocation is of limited effectiveness in preventing that person from further driving an automobile—sober or intoxicated—during the period of the suspension/revocation. People drive out of necessity, and therefore, the taking of a driver's license is often inadequate to ensure that the affected person will not drink and drive.

However, the installation of an electronic automobile alcohol/sensor ignition interlocking device, which detects alcohol on a driver's breath, does far more effectively ensure that the drinking person does not drive.

"Such suspension or revocation shall take effect at the end of a period of not more than fifteen days immediately after the day on which the driver first received notice of the suspension or revocation."

(5) Identified Problem: 15 days is an insufficient period to have a realistic, workable and fair administrative hearing on the appropriateness of a driver's license suspension/revocation.

NACDL remedial suggestion

Requre the hearing to take place within 60 days of first notice and require it to be in the same case where the criminal drunk driving prosecution has been initiated, i.e., it should be a judicial hearing which is assigned to the same court where the drunk driving prosecution is pending.

NACDL comment on hearing within 60 days

The DDPA as presently written condones licneses suspensions for two separate and distinct reasons. First, suspension occurs where there is a chemical test refusal. Second, suspension occurs when person is over the legal chemical test limit, and therefore, is considered drunk.

In both instances, the DDPA mandates the requesting officer to immediately take the suspect's license. This taking is ostensibly not a suspension or recovation—actions which, according to the Act, occur at a subsequent hearing no more than 15 days later. The "immediate taking" unconstitutionally deprives the suspect of any kind of prior due process hearing. See, *Bell* v. *Burson*, 402 U.S. at 539.

The United States Supreme Court has held that interests protected as property, i.e., a driver's license, are varied and are often intangible. *Logan* v. *Zimmerman Bruch Company*, 455 U.S. 422, 430 (1982). These rights relate to the "domain of social and economic fact." Id. at 430, citing *National Mutual Ins. Co.* v. *Tidwater Transfer Co.*, 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting). "Property interests . . . are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law . . . that secure certain benefits and that support claims of entitlement to these benefits." *Board of Regents* v. *Roth*, 408 U.S. 564, 577 (1972).

With specific reference to driver's license taking under the proposed DDPA, one must remember that due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong* v. *Manzo*, 380 U.S. 545 (1965); *Barry* v. *Barchi*, 443 U.S. 55, 66 (1979). Thus, the constitutional guarantee of procedural due process has always been understood to embody not only the requirement of a meaningful opportunity to be heard before the state acts to deprive a person of his or her property, i.e., a driver's license, but also a requirement that the hearing be held at a meaningful time, i.e., before driving privileges have been taken away. See, *Mullane* v. *Central Hanover Trust Company*, 339 U.S. 306, 313, (1950); *Fuentez* v. *Shevin*, 407 U.S. 67 (1972); *Bell* v. *Burson*, 402 U.S. 535 (1971); *Golberg* v. *Kelley*, 397 U.S. 254 (1970).

NACDL is concerned that a 15-day time period may be unrealistic, especially in a large metropolitan community, for the hearing officials, the prosecuting officials and the suspect to prepare for a final hearing on license revocation or suspension.

(6) Identified Problem: There is no specification of what "minimal" due process guidelines will be for suspension/revocation hearings. The present DDPA due process guideline is extremely vague and subjects citizens of different states to different levels of due process or possibly a lack of due process.

NACDL remedial suggestion

NACDL believes that it is critical that specific minimal due process requirements be mandated by the DDPA. The specific requirements are noted below.

NACDL believes that the Act should provide specific direction as to what kind of hearing is necessary, and, what kind of due process guarantees are necessary. Without such direction, citizens of the separate states will be treated unequally, and thus, unfairly.

Most importantly NACDL suggests that Congress require these suspension/revocation hearings be judicial in nature. Presently, most such hearings are administrative in nature, but are subject to trial de novo appeals to a judical court. Thus, since the hearing is likely to wind up before a judicial, official anyway, it should begin there in the first place. Among the advantages of a judicial forum:

First, be it a "refusal" or an "over the limit suspension/revocation," one must recognize that parallel criminal proceedings in a judical forum have already been set in motion, when the suspect was arrested for drunk driving. Accordingly, his case is already bound for a judicial forum with a neutral and detached judge as the finder of fact of law. It makes no sense to expend duplicate money and duplicate governmental resources to create a separate administrative hearing wherein the same issues, evidence and parties are already involved in a judicial setting.

Second, a full and fair hearing is more likely before a judicial officer than before an administrative officer. In light of the substantial punitive nature and purpose of the sanction of license revocation or suspension, adjudication by an employee of the executive branch offers inadequate assurance of a neutral and detached decision.

Third, having a judicial hearing in the same court that handles the drunk driving prosecution ensures that indigent suspects will be treated equally and fairly by virtue of the availability of appointed counsel. In fact, they will have the same appointed counsel as they have in the criminal drunk driving prosecution and at no extra cost.

NACDL comment on additional minimal due process specific requirements

NACDL suggests the following requirements offer the minimum due process guarantees of fairness to a driver's license suspension/revocation hearing:

(1) The State must provide oral and written pre-chemical test admonitions that Miranda/State grounded rights, where not applicable, do not apply to the person's chemical test decision. Moreover, the admonitions must inform the arrested person of the sanctions and penalties for both chemical test refusal and for having a chemical test result which is indicative of drunk driving. This latter requirement also includes the sanctions and penalties for being convicted of drunk driving.

(2) The State must give prior notice of the intended suspension/revocation in writing, and such should be presented in person or by registered mail.

(3) The suspect must be given reasonable time to prepare a defense for the hearing.

(4) The arresting officer must be required to initiate the suspension/revocation process by executing a sworn affidavit, based on personal knowledge, which contains sufficient facts to justify a suspension/revocation.

(5) The prosecution must have the burden of proof by a preponderance of the evidence.

(6) The hearing must be a judicial one wherein the regular rules of evidence and procedure for that court govern.

(7) The chemical test utilized for determining if a person is intoxicated be one which is accepted as accurate and reliable by the scientific community.

(8) The suspect be given supervised and reasonable access to the chemical testing records, logs, manuals, the instruments themselves, preserved test specimens, etc.

(9) The State must be required to preserve chemical test speciments for a period of six months.

(10) The State must be required to perform either chemical testing on the traffic stop scene or three chemical test specimens taken twenty minutes apart.

(11) The suspect must have the option of choosing the type chemical test he/she will take where the State's implied consent statute provides several methods of testing, i.e., breath, blood or urine.

(12) The suspect must have the option of choosing the installation of an automobile ignition alcohol detector as opposed to having her/his license suspended. Said installation period would be the same period of time as the suspension/revocation.

IV. OTHER NACDL SUGGESTIONS FOR ENACTING AN EFFECTIVE DDPA

(1) Require State law enforcement agencies to perform "on the scene" videotaping of citizen/suspects.

NACDL believes that videotape evidence, such as audio and video recordings, made of a drunk driving suspect at the scene of the traffic stop offers the best evidence on the issue of whether or not the person's normal mental and physical faculties were impaired while driving. The videotape film, and the audio recording thereon, freezes for all time the mental and physical characteristics of the suspected drunk driver. Such electronic recordings are the best evidence of intoxication because, through film, the judicial forum actually sees and hears for itself the same evidence the arresting officer saw and heard and the judge need not rely solely upon the opinion of the arresting officer. Accordingly, the DDPA should require states that receive grant money to videotape and audio tape drunk driving suspects at the scene of their traffic stop. Clearly, with today's technology, such a requirement is both convenient and inexpensive.

(2) Congress should require that alcohol beverage containers carry a printed warning which says "driving after consuming alcoholic beverages is dangerous and increases the risk of injury and death to you and others. Conviction of drunk driving can result in jail, finds and loss of your driver's license."

NACDL believes that the public can benefit from the above-referenced warning as it has benefitted from similar warnings that now appear on tobacco products and some artificial sweetener products. Indeed, it may be that the warning on the beverage bottle or can will act as the real deterrent to prevent the citizen from consuming that last drink. Accordingly, NACDL urges Congress to enact legislation requiring the placement of said warnings on alcohol containers.

V. CONCLUSION

NACDL's members, like all concerned citizens, want to protect our families, friends and fellow citizens from the dangers of drunk driving. Moreover, NACDL's members also believe that we must protect the constitutional rights, privileges and protections of all persons concerned: the innocent and the guilty. We hope that this report will be helpful in the consideration of federal drunk driving legislation. Questions or requests for additional information should be addressed to contact listed below.

National Transportation Safety Board
Washington, D.C. 20594

Office of the Chairman

August 12, 1988

Honorable Albert Gore, Jr.
Chairman, Consumer Subcommittee
Committee on Commerce, Science and
Transportation
United States Senate
Washington, D. C. 20510

Dear Chairman Gore:

Thank you for giving us the opportunity to comment on S. 2549, the "Drunk Driving Prevention Act of 1988." The Safety Board is gratified that the major provision of this bill involves administrative revocation of drivers licenses, an element in effective drunk driving deterrence programs we have been advocating for years.

I recently returned from chairing a hearing in Louisville, Kentucky on the tragic church bus/pickup truck collision that occurred on May 14 in Carrollton. The 27 fatalities made it the worst drunk driving accident in our nation's history, and it rightfully has received much media and public attention. But an even greater tragedy is the fact that an average of 65 people die every single day in drunk driving accidents nationwide. This does not reflect the additional human tragedy of victims who are severely injured and require protracted periods of recuperation, or adjustment to lives permanently altered.

The Safety Board strongly advocates aggressive drunk driving statutes, including one of the most effective elements -- administrative revocation. We recommended in 1984 to all state governors that their legislatures adopt such laws, and our view has been bolstered by several new studies that appear to support the effectiveness of administrative revocation.

The Insurance Institute for Highway Safety (IIHS) recently released "Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving," which examined the effects of administrative revocation, first-offense jail sentencing and illegal per se laws on fatal crashes in selected states that have adopted such laws. Their analysis claims that in 1985 an estimated 1,560 fewer drivers were involved in fatal crashes because of these three laws. Moreover, the IIHS claims that if all states were to adopt these measures, another 2,600 fewer drivers would be involved in fatal crashes each year. Of special interest is the author's conclusion that administrative revocation laws were the most effective of the three laws studied, and that during hours when more than half of all fatally-injured drivers have blood alcohol concentrations (BACs) over 0.10 percent, administrative revocation is estimated to reduce the involvement of drivers in fatal crashes by nine percent.

Wisconsin examined the deterrent effects of its administrative revocation law. Using a surrogate measure for alcohol-involvement -- late night, single-vehicle, injury-producing crashes involving male drivers -- the state found a substantial reduction in this surrogate measure for alcohol-involved accidents. A companion study of those drivers suspended under the law indicated that they had fewer subsequent convictions and crashes. The authors of this study concluded that "100 percent mandatory license suspension is an effective legal sanction against drinking and driving."

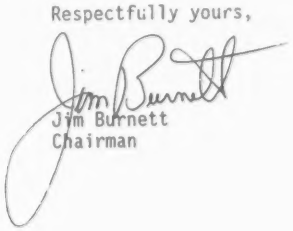
A 1986 analysis of alcohol-related fatal crash statistics in New Mexico before and after implementation of its law found that the percentage of fatally-injured drivers with a BAC greater than 0.05 percent fell from 66 to 56 percent. In a 1987 study by Ross and Gonzales, the authors interviewed New Mexico drivers whose licenses had been suspended or revoked for drunk driving. They found that while "driving is not eliminated, ... it is modified, specifically, [it was] reduced in quantity and improved in quality." This finding is consistent with other studies that indicate that even though some drivers continue to drive after revocation, they tend to drive less frequently and more cautiously. Many drivers, of course, adhere to the law and do not drive at all. For these drivers, license revocation is 100 percent effective in protecting public safety.

We believe that the effects of administrative license revocation are two-fold -- the licenses of dangerous drivers are revoked more quickly, and the likelihood of receiving a penalty for drunk driving is dramatically increased.

As of July 1, 23 states and the District of Columbia have enacted administrative revocation laws, an important factor, we believe, in reducing alcohol-related traffic deaths from 25,600 in 1982 to 23,630 in 1987. In addition, five states have enacted legislation that permits pre-adjudication license actions to be taken by a court.

Mr. Chairman, we appreciate and support the effort that you and your colleagues have put into this legislation. If we can be of assistance in providing additional information, please do not hesitate to let us know.

Respectfully yours,



Jim Burnett
Chairman

Department of Transportation
700 Broadway Avenue East
Pierre, SD 57501-2586 605/773-3265

August 1, 1988

The Honorable Larry Pressler
United States Senate
411 Russell Senate Office Building
Washington, D.C. 20501

Dear Senator Pressler:

We understand that the Consumer Subcommittee of the Senate Commerce Committee will hold a hearing on August 2 on S. 2549, legislation to combat drunk driving. We take this opportunity to advise you of South Dakota's views on this bill and ask that you arrange for these views to be included in the Subcommittee's hearing record.

South Dakota strongly supports the general goal of the bill -- the improvement of public safety through measures to reduce drunk driving. However, as explained more fully below, we cannot support S. 2549 unless its provisions are modified so that South Dakota clearly would have the opportunity to participate in the grant program that bill would establish. We also set forth below suggested amendments which would meet our concerns.

One Requirement for State Participation in S. 2549's Grant Program May Be In Conflict With the South Dakota Constitution And Is, In Any Event, Undesirable

Section 2(a) of S. 2549 would establish a program of grants to states which take certain measures to reduce drunk driving. The program would be codified at 23 U.S.C. § 409.

Proposed section 409(a)(2) would establish, as a prerequisite to receipt of grants, that a state provide for a

> self-sustaining program under which the fines or surcharges collected from individuals convicted of driving a motor vehicle while under the influence of alcohol are returned to those communities which have comprehensive programs for the prevention of drunk driving.

This provision appears to be in conflict with Article VIII of our State's Constitution. Article VIII establishes several permanent funding mechanisms to support public education in South Dakota, so that sorely needed funding for public schools is less subject to political uncertainty. Section 3 of Article VIII specifically provides

> That the proceeds of all fines collected from violations of state laws shall be paid to the county treasurer of the

> county in which said fine shall have been imposed and by him distributed among and between all of the several public schools incorporated in such county in proportion to the number of children in each, of school age, as may be fixed by law.

In short, South Dakota's Constitution has made provision for the distribution of fines for drunk driving violations not readily -- if at all -- reconcilable with proposed section 409(e)(2). Thus, unless that provision is eliminated from the bill or modified, South Dakota might not be able to participate in the proposed program.

We see absolutely no basis for the Federal Government precluding a state from participating in a drunk driving grant program because that state has utilized a specific financing device to assist a public purpose as important as reducing drunk driving -- support for public schools. We hope that the bill's sponsors did not intent to create such difficulties for states interested in participating in the program.

We also see two other difficulties with proposed section 409(e)(2). The provision will require states to establish detailed accounting systems to allocate the proceeds of certain fines. Even in our lightly populated, rural state, there are hundreds of jurisdictions -- counties, cities, towns -- and the cost of allocating these fine proceeds according to formula seems inordinate given the small size and temporary nature of the proposed grant program. In addition, the provision requires distribution of fine proceeds to "communities which have comprehensive programs for the prevention of drunk driving". This is a term totally undefined in the bill and apparently would have to be defined by FHWA. We see no need for the Federal Government, in taking further steps to combat drunk driving, to choose a course which would require FHWA to tell states which of their local jurisdictions can and can not receive the proceeds of certain state fines. This, we believe is inappropriate micromanagement of state and local government from Washington. We also note that, in testimony before the Committee, the Administration opposed the imposition of detailed requirements on the states and generally opposed the bill. We would not go so far as to oppose the bill generally, but we do believe proposed section 409(e)(2) would impose far too detailed a requirement on the states.

Suggested Amendment

For the reasons set forth above, we ask that proposed section 409(e)(2) be deleted (with technical conforming changes to the numbering of provisions).

We would also accept a related conforming change. Specifically, the proposed grant program is only temporary. Perhaps the bill's sponsors intended the self-sustaining fine program of proposed 409(e)(2) as a means of ensuring continued state efforts to combat drunk driving after the grant program terminates. To meet that concern, we would accept, as part of an amendment deleting proposed 409(e)(2), an amendment to proposed section 409(b).

Proposed section 409(b) would require a state, as a condition to receiving grants, to continue its past level of financial support for drunk driving enforcement programs. We would accept modification of proposed 409(b) so that a state's commitment to expenditures to enforce drunk driving laws would extend for two years beyond expiration of the grant program. This could be done by inserting, after the word "that" on page 2, line 12 of the bill, the phrase ", for up to two years beyond the year in which a grant under this section is made,".

Relation to S. 2367 as Ordered Reported; Alternative Amendment

We also note here that the Senate Environment and Public Works Committee has ordered reported S. 2367, a bill which, as introduced, was identical to S. 2549. In mark-up that Committee amended S. 2367 to provide that a state could meet the requirements of proposed 409(e)(2) if it spent, on anti-drunk driving efforts, an amount equivalent to fine proceeds. That change by the Public Works Committee does respond to our state constitutional concern that the actual proceeds of fines not be earmarked for a specific purpose by drunk driving legislation. Thus, we would hope that the Commerce Committee could, at a minimum, make a similar change.

However, a broader amendment is needed to respond to our concern that the program requirements of proposed section 409(e)(2) are far too detailed.

Consider a given local town or county which has alert peace officers who pull over and fine a significant number of individuals driving while under the influence of alcohol, but which has no special "comprehensive program to prevent drunk driving" on its books. May a state forward grant funds under this bill to that jurisdiction, or are the funds reserved for other local jurisdictions with additional requirements on the books but less evidence of a strong enforcement effort? Putting aside any individual's views as to the "best" answer to this question, the point is, why should such detailed state/local issues have to be resolved in order for states to receive grants to combat drunk driving. We think the Congress should deem them irrelevant, and should do so by deleting proposed 409(e)(2) (coupled with the above-noted amendment to proposed 409(b)).

However, if that amendment is not feasible, we would suggest one additional alternative for the consideration of the Congress -- that the language of proposed section 409(e)(2) (as amended by the Senate Public Works Committee in its mark-up of S. 2367) be shifted into proposed subsection 409(f). Under that approach, a state could at least receive a "basic" grant for certain anti-drunk driving efforts without meeting the detailed and burdensome requirements of proposed 409(e)(2). By shifting that language to subsection (f), those requirements would have to be met to receive a "supplemental" grant, but not a "basic" grant.

The Highway Trust Fund Should Not Be Used To Finance This Program

We further believe that the grant program in S. 2579 should not be funded out of the Highway Trust Fund. The Highway Trust Fund is dedicated to enhancing our nation's highway transportation system. We believe that there has long been recognition -- in the Congress, the States, and the highway user community -- that unmet highway needs exceed present Federal and state highway revenue sources, including the present balance in the Federal Highway Trust Fund.

While enhanced efforts to combat drunk driving deserve public support, it should not be at the expense of the Highway Trust Fund. Use of Trust Fund monies for this purpose would only widen the gap between highway needs and available revenues.

Accordingly, we recommend that the phrase ", out of the Highway Trust Fund," be deleted from proposed section 409(g). At a minimum, the program should not be funded solely out of the Trust Fund, but at least partly out of the General Fund.

Opposition to S. 2523

Before closing, we also note our opposition to S. 2523, which would reduce the amount of Federal-aid highway funds apportioned to a State which does not adopt specified programs to combat drunk driving. We agree with the statement submitted to Environment and Public Works Committee by AASHTO, strongly opposing the use of highway funding sanctions as a means of coercing states to adopt specified policies. Even for laudable goals, such as the reduction of drunk driving, the Federal government should use the carrot of incentives, rather than the stick of sanctions, to obtain the participation of states in the advancement of policies. Should S. 2523 or any other "sanctions" amendment be offered as an amendment to S. 2549, either in Committee or on the floor, we ask that you oppose it.

Conclusion

We strongly support efforts to combat drunk driving and could support Federal proposals to assist states to that end. However, the sanction approach of S. 2523 is totally unacceptable to us.

The incentive approach of S. 2549 is attractive, but its specific provisions needlessly threaten South Dakota's ability to participate in its grant program. We could support S. 2549 only if it is amended, such as outlined above, to eliminate that potential barrier to South Dakota's participation in the program. We also believe that the bill should be amended so that its requirements do not needlessly impose red tape on state governments and so that the bill's grant program would not be funded with Highway Trust Fund monies.

We thank you in advance for your consideration of our views.

Sincerely,

Richard L. Howard
Secretary
Department of Transportation

Jeff Stingley
Secretary
Department of Commerce & Regulation